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**GST**

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**CLASSIFICATION OF  
GOODS AND  
SERVICES  
- PRINCIPLES &  
INTERPRETATION**



The Goods and Services Tax Practitioners'  
Association of Maharashtra

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# FOREWORD

I am very much delighted to write this foreword to Shri Ratan Samal's short publication on the Classification of Goods and Services – Principles and Interpretation that is published by the Goods and Services Tax Practitioners Association. When I received a call fifteen days ago from the President of GSTPAM to mentor the contributor, Ratan Samal of the present short publication, I immediately accepted since I was confident that Ratan would present a classic presentation in the present booklet. It has been my good fortune to have known Ratan from the past few decades as a friend in the Bar.

GSTPAM has rightly thought to bring a short publication since GST was introduced exactly one year before; on 1st July, 2017 and the traders and practitioners have been facing tremendous difficulty in properly classifying the goods and services. Ratan has shown a remarkable quality of research in all parts of the book; more particularly, in providing relevant FAQ's and reproducing correct judgments at the correct place. He has carefully planned his work into various parts and has neatly arranged them. On account of such proper division one will be able to lay on one's fingertips, the required classification of goods and services wherever and whenever there is an ambiguity in classifying particular goods or service. The writing shows his devotion and his experience and exposure in the field of law as an advocate.

My warmest congratulations and best wishes to the contributor, Shri Ratan Samal and the GSTPAM. May excellency flow out of his facile pen always.

**(V. SHRIDHARAN)**  
Senior Counsel,  
Bombay High Court

# Preface

It gave me immense pleasure when I received a call from Pranavbhai Kapadia, President of The Goods and Services Tax Practitioners Association when he requested me to write a short booklet on the topic of classification of Goods and Services under the GST Law. I have delivered few lectures on the present subject from the time the GST law was brought into force. I have also written few articles on the present topic. In fact, I was already planning to write a short book on this topic and I felt privileged when such an opportunity was given by the GSTPAM to me.

Incorrect nomenclature in the product and service description is one of the greatest challenges faced universally. Any incorrect classification of goods or services will lead to multiplicity of litigation, which in turn, will affect the Government treasury and the pockets of businessmen. Keeping in mind these aspects, I have tried to properly present the topics so that the readers can easily overcome such ambiguities.

A rough draft copy was sent to my mentor, Senior Counsel, Shri Sridharan Sir. He reverted immediately within a span of three days and suggested to classify goods and services separately. When I met him on the next day at the Income Tax Appellate Tribunal, he sat outside the courtroom and gave me few tips to make this booklet more understandable and attractive. He suggested writing various theories adapted by the Courts on the interpretation of classification of goods. To be honest, though I was aware of the theories, I did not know about the essence and purpose of these theories, which I immediately acknowledged to him. I have put all such thoughts of my senior brother in the part titled as, *'Issues, Challenges and Controversies of the Past and Present.'*

This short booklet is mainly intended towards indirect tax practitioners and indirect tax authorities. This book stimulates awareness of issues and the technique of analyzing and approaching them in order to correctly classify the goods and services. I have even tried to insert FAQs and Advance Rulings, which are available up till date. I have also tried to add my thoughts and opinions, which I have forwarded to my clients in the general course of my practice.

I sincerely thank Shri Pranavbhai Kapadia, the President of GSTPAM and Shri C. B. Thakar, Advocate, for encouraging me in this endeavour. I also sincerely thank the members of the Publishing Committee of the GSTPAM, especially Shri Aditya Surte, Chartered Accountant. Without the valuable opinion and mentoring of Shri Sridharan Sir, the task would have been very difficult. I adore and value the views expressed by him.

**Ratan Samal**  
Advocate

# Message

In 2017-18, India has seen a major change in its indirect tax system in the form of GST. It is the first time that the country has a uniform law across goods and services and across the nation. As the transitional phase and the teething issues slowly settle, it is our endeavour to come out with series of short publications on important topics under GST that will create value for our members in their day-to-day practice.

During the implementation phase of GST, various issues have surfaced in Classification of Goods and Services. The tax professionals and business community at large need to understand the Principles for Classification of Goods and Services along with the Interpretations thereof. Classification of goods and services has been prone to litigation in the customs, excise, service tax and VAT laws and has been a subject matter of various judicial pronouncements.

With this background in mind, we approached Advocate Shri Ratan Samal to write a short publication on the topic 'Classification of Goods and Services – Principles and Interpretation'. He has within a short span of time written this publication in a masterly manner covering the various aspects of classification of goods as well as services under the GST law and the precedents under the other laws.

We are fortunate that Sr. Advocate Shri V. Sridharan consented to be a mentor and guide in writing this publication. His valuable suggestions have resulted in making this complex topic more understandable and simple. This publication will be of immense utility in understanding the principles and interpretations in classification of goods and services and benefit the tax professionals and dealers in taking decisions for correct classification.

The dedicated and sincere efforts of Convenors of the Publication Committee CA Ashit Shah and CA Aditya Surte have been very much instrumental in conceptualising, planning and publishing these series of short publications. We are also thankful M/s. Finesse Graphics in timely printing of the publication.

This is the first publication in this series of publications envisaged by the Publication committee of GSTPAM. The subsequent publications in the series are also expected to be released soon covering subject wise and industry wise topics.

We are confident that the readers of this publication will be immensely benefitted from the details and analysis written by the author Advocate Shri Ratan Samal under the guidance of the mentor Sr. Adv. Shri V. Sridharan.

**Pranav Kapadia**  
*President-GSTPAM*

**Rajat Talati**  
*Chairman – Publication Committee*

Mumbai, 29-06-2018

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# CLASSIFICATION OF GOODS AND SERVICES - PRINCIPLES & INTERPRETATION

## INTRODUCTION

India, w.e.f. 1st July, 2017, switched to GST which is the single biggest tax reform undertaken by the country since 70 years of independence. GST is a multi-stage destination based tax which will be collected at every stage of supply of goods or services or both. The credit of taxes paid at the previous stages will be available for set-off at the next stage of supply. GST is applicable on the taxable supply of goods and services or both on the value determined as per the provisions and at such rates as may be notified by the Government on recommendation of the GST Council. The GST Council has fixed four broad tax slabs, i.e., 5%, 12%, 18% and 28%. On the top of the highest slab, there is a cess on luxurious and demerit goods to compensate the States for revenue loss in the first five years of GST implementation. Most of the goods and services have been listed in four slabs but goods like gold and rough diamond have exclusive tax rates. Some goods have also been exempted from taxation. The essential items have been kept in the lowest tax bracket whereas; luxury goods and tobacco products are subject matter of higher tax rates.

## OBJECTS AND PURPOSES

Incorrect nomenclature and ambiguities in the product description are the greatest challenges faced globally. Incorrect or misleading classification of commodities and services brings a lot of problems and risks to the businessman, as well as to the exchequer. It also leads to multiplicity in litigation which affects the economy and also affects both the parties to the litigation. The Comptroller

and Auditor General of India, in Report No. 12 of 2014 has stated that Director of Revenue Intelligence of India had detected 298 duty evasion cases involving misdeclaration of goods to the tune of ₹ 23.92 crore in the Financial Year 2013 itself (Sourced from Thomson Reuters' blog). In intricate business domains, classification of commodities are a major challenge to the industries as well as to the authorities. New business ventures need a proper understanding of classification of goods and services, i.e., when a new product is launched or a new service is provided.

Misclassification of goods and services may lead to several adverse consequences. To be specific, few of them are as under:

1. Lesser charging of rate of tax will come under limelight, either at the time of Audit or at the time of assessment; or under the action of enforcing agencies which would consequently lead to erosion of profits on account of higher levy of tax rate, interest and penalty at a later stage. Since GST is an indirect tax and is ultimately collected, it will hit the pockets of the suppliers. Even the customers will not pay for the same.
2. If higher rate of tax is charged than the applicable lower rate, there is a higher risk of getting refund from the exchequer since it is collected from the customers and further, there is loss of business since the other suppliers may be charging a lower rate.
3. Incorrect classification will lead to a great impact in the chain of ITC (Input Tax Credit) claim. It has a serious impact in other tax legislations like Income-tax, i.e. If, on account of misclassification, a higher tax is discharged along with interest and penalty, then you may not get the benefit of deduction under the Income-tax Act, 1961.
4. Earlier, under Central Excise, which was single point tax collection on the manufacture of goods, any misclassification had an impact on the manufacturer collecting the tax and had no direct bearing on the product sold on the distributor or the retailer. But under the GST, which is multiple tax collection at each and every stage and ITC is claimed on the corresponding purchases, any misclassification will disturb the entire chain of transaction.

## RELATED PROVISIONS UNDER THE LAW WITH ANALYSIS

1. As per Section 9 of the CGST Act, 2017 and the SGST Act, 2017, tax shall be levied on intra-State supply of goods and services or both at such rate as may be recommended by the Council. The GST Council-Ministry of Finance, Government of India, Revenue Department *vide* Notification No. 1/2017 dated 28/06/2017 had notified the rates of the Central Tax at 2.5%, 6%, 9%, 14%, 1.5% and 0.125% classifying all the goods under Schedule I to VI respectively. Similarly, the State Government charges at the same rates as stated above. A separate exemption schedule was notified *vide* Notification No. 2 of 2017 dated 28/06/2017 exempting certain supply of goods by virtue of exemption granted u/s. 11(1) of CGST Act, 2017. Parallel provisions are also provided in the State laws granting such exemption.
2. The rate notifications stated above in terms of supply of goods provide an Explanation for the purpose of the notification. Note (iii) & (iv) to the said *Explanation* reads as under:
  - (iii) *“Tariff item”, “sub-Heading” “Heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*
  - (iv) *The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.*
3. First Schedule to the Customs Tariff Act, 1975 provides certain principles for interpretation of the tariff entries.

### ***General rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975***

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification

shall be determined according to the terms of the headings and any relative Section or chapter notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule.
3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
  - (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
  - (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

- (c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
- 4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.
- 5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:
  - (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;
  - (b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.
- 6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and chapter notes also apply, unless the context otherwise requires.

## IMPORTANCE OF HSN

- 1. In 1983, under the auspices of the World Customs Organization (WCO), most of the major trading countries of the world agreed to a single numbering system, which became the

Harmonized System (HS). This system was brought to effect from January 1, 1988.

2. The Customs Tariff is aligned with HSN. Therefore, the Explanation provided in the HSN, viz., the Customs Co-operation Council, (known as World Customs Organization, Brussels) plays a vital role in interpreting the Tariff Entries. Hon'ble Supreme Court, in the matter of '**Reckitt Benckiser (India) Ltd. vs. Commissioner, Commercial Taxes and Ors (2008) 15 VST 10 (SC)**', recognizes the importance of the Explanation in HSN, wherein it was held that, "*Kerala Value, Added Tax Act, 2003 was aligned with The Customs Tariff Act, 1975 which in turn was aligned with the Harmonized System of Nomenclature (HSN) and consequently each product in question had to be seen in the context of the HSN code and the judgment based thereon.*"

3. The Hon'ble Supreme Court in, '**Commissioner of Customs & Central Excise, Goa vs. Phil Corporation Ltd. (2005) 12 SCC 333**' held that, "*We have heard the learned counsel for the parties at length and carefully analyzed the judgments cited at the Bar. The Central Excise Tariff Act is broadly based on the system of classification from the International Convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature) with necessary modifications. HSN contains a list of all the possible goods that are traded (including animals, human hair, etc.) and as such the mention of an item has got nothing to do whether it is manufactured and taxable or not.*"

It was also held that, "*In a number of cases, this Court has clearly enunciated that the HSN is a safe guide for the purpose of deciding issues of classification. In the present case, the HSN explanatory notes to Chapter 20 categorically state that the products in question are so included in Chapter 20. The HSN explanatory notes to Chapter 20 also categorically state that its products are excluded from Chapter 8 as they fall in Chapter 20. In this view of the matter, the classification of the products in question have to be made under Chapter 20.*"

4. In '**Collector of Central Excise, Shillong vs. Wood Craft Products Ltd.**' it was held that, "As expressly stated in the

Statement of Objects and Reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on Harmonized System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to 'reduce disputes on account of tariff classification.' Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. The ISI Glossary of Terms has a different purpose and therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in the HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

5. In the pre-GST regime, wherever there was a dispute regarding classification of any commodity, either under the Sales Tax laws or under the Customs Act or under the Central Excise Act, Indian Courts have always taken the explanation provided in the HSN for the correct classification of commodities. Even in the post-GST regime, not only the Act directs to refer to HSN, but also, the Advance Ruling authorities have taken the General Explanations or the internal explanations to each Chapter of the HSN while deciding the issue till date. Therefore, one has to be thorough at least to understand the General Explanations provided in the HSN. Classification of goods in the Harmonized System of Nomenclature shall be governed by the following principles:

## **GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM**

Classification of goods in the nomenclature shall be governed by the following principles :

### **RULE 1**

**The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any**

**relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.**

### EXPLANATORY NOTE

- I. The Nomenclature sets out in systematic form the goods handled in international trade. It groups these goods in Sections, Chapters and sub-Chapters which have been given titles indicating as concisely as possible the categories or types of goods they cover. In many cases, however, the variety and number of goods classified in a Section or Chapter are such that it is impossible to cover them all or to cite them specifically in the titles.
- II. Rule 1 begins therefore by establishing that the titles are provided “for ease of reference only”. They accordingly have no legal bearing on classification.
- III. The second part of this Rule provides that classification shall be determined :
  - a. According to the terms of the headings and any relative Section or Chapter Notes, and
  - b. Where appropriate, **provided the headings or Notes do not otherwise require**, according to the provisions of Rules 2, 3, 4, and 5.
- IV. Provisions (III)(a) is self-evident and many goods are classified in the Nomenclature without recourse to any further consideration of the Interpretative Rules (e.g., live horses (heading 01.01), pharmaceutical goods specified in Note 4 to Chapter 30 (heading 30.06)).
- V. In provision (III)(b) :
  - a. The expression “provided such Heading or Notes do not otherwise require” is intended to make it quite clear that the terms of the Headings and any relative Section or Chapter Notes are paramount, i.e., they are the first consideration in determining classification. For example, in Chapter 31, the Notes provide that certain headings relate only to particular goods. Consequently those



headings cannot be extended to include goods which otherwise might fall there by reason of the operation of Rule 2(b).

- b. The reference to Rule 2 in the expression “according to the provisions of Rules 2, 3, 4 and 5” means that :
1. Goods presented incomplete or unfinished (e.g., a bicycle without saddle and tyres), and
  2. Goods presented unassembled or disassembled (e.g., a bicycle, unassembled or disassembled, all components being presented together) whose components could individually be classified in their own right (e.g., tyres, inner tubes) or as “parts” of those goods,

are to be classified as if they were those goods in a complete or finished state, **provided the terms of Rule 2(a) are satisfied and the Headings or Notes do not otherwise require.**

## RULE 2

- a) **Any reference in a Heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.**
- b) **Any reference in a Heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance. The classification of goods consisting wholly or partly of such material or substance shall be according to the principles of Rule 3.**

## EXPLANATORY NOTE

### RULE 2(A)

#### (Incomplete or unfinished articles)

- I. The first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or unfinished article.
- II. The provisions of this Rule also apply to **blanks** unless these are specified in a particular heading. The term “**blank**” means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can be only used, other than in exceptional case, for completion into the finished article or part (e.g., bottle performs of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape). Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as “blanks”.
- III. In view of the scope of the headings of Sections I to VI, this part of the Rules does not normally apply to goods of these Sections.
- IV. Several cases covered by the Rule are cited in the General Explanatory Notes to Sections or Chapters (e.g., Section XVI, and Chapters 61, 62, 86, 87 and 90).

### RULE 2(a)

#### (Articles presented unassembled or disassembled)

- V. The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

- VI. This Rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of this Rule.
- VII. For the purposes of this Rule, “articles presented unassembled or disassembled” means articles, the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved.
- No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operations for completion into the finished state.
- Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.
- VIII. Cases covered by this Rule are cited in the General Explanatory Notes to Sections or Chapters (e.g., Section XVI, and Chapters 44, 86, 87 and 89).
- IX. In view of the scope of the headings of Sections I to VI, this part of the Rule does not normally apply to goods of these Sections.

## **RULE 2(b)**

### **(Mixtures and combinations of materials or substances)**

- X. Rule 2(b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., Heading 05.07 – Ivory), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 – articles of natural cork). It will be noted that the Rule applies only if the Heading or the Section or Chapter Notes do not otherwise require (e.g., Heading 15.03 – Lard oil, **not ... mixed**).

Mixtures being preparations described as such in a Section or Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

- XI. The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance deprives the goods of the character of goods of the kind mentioned in the heading.
- XII. It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.
- XIII. As a consequence of this Rule, mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if *prima facie* classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.

### RULE 3

**When by application of Rule 2(b) or for any other reason, goods are *prima facie*, classifiable under two or more headings, classification shall be effected as follows:**

- a. **The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.**
- b. Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sales, which cannot be classified by reference

to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable

- c. When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration

### EXPLANATORY NOTE

- (I) This rule provides three methods of classifying goods which, prima facie, fall under two or more headings, either under the terms of Rule 2(b) or for any other reason. These methods operate in the order in which they are set out in the Rule. Thus Rule 3 (b) operates only if Rule 3(a) fails in classification, and if both Rules 3(a) and (b) fail, Rule 3(c) will apply. The order of priority is therefore (a) specific description; (b) essential character; (c) heading which occurs last in numerical order.
- (II) The Rule can only take effect **provided the terms of headings or Sections or Chapter Notes do not otherwise require**. For instance, Note 4 (B) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4 (B) to Chapter 97 and not according to this Rule.

### RULE 3(a)

- (III) The first method of classification is provided in Rule 3 (a), under which the heading which provides the most specific description of the goods is to be preferred to a heading which provides a more general description.
- (IV) It is not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another, but in general it may be said that:
  - a. A description by name is more specific than a description by class (e.g., shavers and hair clippers, with self-

contained electric motor, are classified in heading 85.10 and not in heading 84.67 as tools for working in the hand and self-contained electric motor or in heading 85.09 as electro-mechanical domestic appliances with self-contained electric motor).

- b. If the goods answer to a description which more clearly defines them, that description is more specific than one where identification is less complete.

Examples of the latter category of goods are:

1. Tufted textile carpets, identifiable for use in motor cars, which are to be classified not as accessories of motor cars in heading 87.08 but in heading 57.03, where they are more specifically described as carpets.
  2. Unframed safety glass consisting of toughened or laminated glass, shaped and identifiable for use in aeroplanes, which is to be classified not in heading 88.03 as parts of goods of heading 88.01 or 88.02 but in heading 70.07, where it is more specifically described as safety glass.
- (V) However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification of the goods shall be determined by Rule 3 (b) or (c).

### **RULE 3(b)**

(VI) This second method relates only to :

- i. Mixtures.
- ii. Composite goods consisting of different materials.
- iii. Composite goods consisting of different components.
- iv. Goods put up in sets for retail sales.

It applies only if Rule 3(a) fails.

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, in so far as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of goods.
- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adopted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

1. Ashtrays consisting of a stand incorporating a removable ash bowl
2. Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general Rule, the components of these composite goods are put up in a common packing.

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which :
- a) Consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
  - b) Consist of products or articles put up together to meet a particular need to carry out a specific activity; and
  - c) Are put up in a manner suitable for sale directly to end users without repacking (e.g., in boxes or cases or on boards).

“Retail sale” does not include sales of products which are intended to be resold after further manufacture, preparation, repacking or incorporation with or into other goods.

The term “goods put up in sets for retail sale” therefore only covers sets consisting of goods which are intended to be sold to the end user where the individual goods are intended to be used together. For example, different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal, packaged together and intended for consumption by the purchaser would be a “set put up for retail sale”.

Examples of sets which can be classified by reference to Rule 3(b) are :

1. a. Sets consisting of a sandwich made of beef, with one or without cheese, in a bun (heading 16.02), packaged with potato chips (French fries) (heading 20.04) :

Classification in heading 16.02.

- 
- b. Sets, the components of which are intended to be used together in the preparation of a spaghetti meal, consisting of a packet of uncooked spaghetti (heading 19.02), a sachet of grated cheese (heading 04.06) and a small tin of tomato sauce (heading 21.03), put up in a carton:

Classification in heading 19.02.

The Rule does not, however, cover selections of products put up together and consisting, for example, of :

- A can of shrimps (heading 16.05), a can of *pate de foie* (heading 16.02), a can of cheese (heading 04.06), a can of sliced bacon (heading 16.02), and a can of cocktail sausages (heading 16.01); or
- A bottle of spirits of heading 22.08 and a bottle of wine of heading 22.04.

In the case of these two examples and similar selections of products, each item is to be classified separately in its own appropriate heading. This also applies, for example,



to soluble coffee in a glass jar (heading 21.01), a ceramic cup (heading 69.12) and a ceramic saucer (heading 69.12) put up together for retail sale in a paperboard box.

2. Hairdressing sets consisting a pair of electric hair clippers (heading 85.10), a comb (heading 96.15), a pair of scissors (heading 82.13), a brush (heading 96.03) and a towel of textile material (heading 63.02), put up in a leather case (heading 42.02)

Classification in heading 85.10.

3. Drawing kits comprising a ruler (heading 90.17), a disc calculator (heading 90.17), a drawing compass (heading 90.17), a pencil (heading 96.09) and a pencil-sharpener (heading 82.14, put up in a case of plastic sheeting (heading 42.02):

Classification in heading 90.17.

For the sets mentioned above, the classification is made according to the component, or components taken together, which can be regarded as conferring on the sets as a whole its essential character.

- (XI) This Rule does not apply to goods consisting of separately packed constituents put up together, whether or not in a common packing, in fixed proportion for the industrial manufacture of, for example, beverages.

### **RULE 3(c)**

- (XII) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they are to be classified in the heading which occurs last in numerical order among those which equally merit consideration in determining their classification.

### **RULE 4**

**Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods which they are most akin.**

## EXPLANATORY NOTE

- (I) This Rule relates to goods which cannot be classified in accordance with the Rules 1 to 3. It provides that such goods shall be classified under the heading appropriate to the goods to which they are most akin.
- (II) In classifying in accordance with Rule 4, it is necessary to compare the presented goods with similar goods in order to determine the goods to which the presented goods are most akin. The presented goods are classified in the same heading as the similar goods to which they are most akin.
- (III) Kinship can, of course, depend on many factors, such as description, character, purpose.

## RULE 5

**In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein :**

- (a) Camera cases, musical instruments cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole essential character ;**
- (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.**

## EXPLANATORY NOTE

### **RULE 5(a)** **(Cases, boxes and similar containers)**

- 1) This Rule shall be taken to cover only those containers which :
  - i. are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;
  - ii. are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;
  - iii. are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;
  - iv. are of a kind normally sold with such articles; and
  - v. do not give the whole its essential character.
- 2) Examples of containers, presented with the articles for which they are intended, which are to be classified by reference to this Rule are :
  - i. Jewellery boxes and cases (heading 71.13);
  - ii. Electric shaver cases (heading 85.10);
  - iii. Binocular cases, telescope cases (heading 90.05);
  - iv. Musical instrument cases, boxes and bags (e.g., heading 92.02);
  - v. Gun cases (e.g., heading 93.03).

- 3) Examples of containers not covered by this Rule are containers such as a silver caddy containing tea, or an ornamental ceramic bowl containing sweets.

### **RULE 5(b)** **(Packing materials and packing containers)**

- 4) This Rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas.
- 5) This Rule is subject to Rule 5 (a) and, therefore, the classification of cases, boxes and similar containers of the kind mentioned in Rule 5(a) shall be determined by the application of that Rule.

### **RULE 6**

**For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those subheadings and any related Sub-headings Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.**

### **EXPLANATORY NOTE**

- I. Rules 1 to 5 above govern, *mutatis mutandis*, classification at sub-headings (level 1) or two-dash sub-headings (level 2).
- II. For the purposes of Rule 6, the following expressions have a the meanings hereby assigned to them :
  - a) “sub-headings at the same level” : one-dash subheadings (level 1) or two-dash sub-headings (level 2).

Thus, when considering the relative merits of two or more one-dash subheadings within a single heading in

the context of Rule 3 (a), their specifically or kinship in relation to a given article is to be assessed solely on the basis of the texts of the competing one-dash subheadings. When the one-dash subheading that is most specific has been chosen and when that subheading is itself subdivided, then, and only then, shall the texts of the two-dash subheadings be taken into consideration for determining which two-dash subheading should be selected.

- b) “unless the context otherwise requires” : except where Section or Chapter Notes are incompatible with subheading texts or Subheading Notes.

This occurs, for example, in Chapter 71 where the scope assigned to the term “platinum” in Chapter Note 4(B) differs from that assigned to “platinum” in Subheading Note 2. For the purpose of interpreting subheadings 7110.11 and 7110.19, therefore, Subheading Note 2 applies and Chapter Note 4(B) is to be disregarded.

- c) The scope of a two-dash subheading shall not extend beyond that of the one-dash subheading to which the two-dash subheading belongs; and the scope of a one-dash subheading shall not extend that of the heading to which the one-dash subheading belongs.

## **RULES FOR INTERPRETATION OF SERVICE ENTRIES:**

1. As far as the supply of services are concerned, the Council has notified a separate schedule vide Notification No. 11 of 2017 dated 28/06/2017 classifying various categories of services and their tax rates thereon; which have equally found place in the State Legislation. Similarly, the Central Government vide Notification No. 12 of 2017 dated 28/06/2017 has prescribed NIL rate of tax for certain classes of services which are equivalently found in the State Legislation.
2. Since the above explanation deals with supply of goods only, a separate *Explanation* has been provided in the service tariff notifications independently. Therefore, while interpreting service tariff entry, one has to look into the *Explanation* appended to such service tariff notification.

3. In the services rate notification, the meaning assigned to the terms has a place from Clause 2 onwards. For e.g.,

- (i) **Government entity**- The meaning is provided in Clause 5 by way of explanation (sub-clause x) which means an authority or a board or any other body including a society, trust, corporation set-up by an Act of Parliament or State Legislature or established by any of the Governments with 90% or more participation by way of equity or control to carry out functions entrusted by the Central Government, State Government, Union Territory or a local authority.

In the service tariff notification, Chapter Heading 99.94 deals with construction services. When a composite supply of works contract is carried out as defined u/s. 2(119) of the CGST Act, 2017, then the rate of tax applicable is 18%, whereas, if the services are provided to *Government entities*, then the rate applicable would be at the rate of 12%.

- (ii) **Agricultural produce**- Agricultural produce means, “Any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which doesn’t alter its essential characteristics but makes it marketable for primary market.”

Even under the service tariff entry, while classifying any service in any chapter, one has to look into the entries in depth, for e.g. services relating to cold storage. The cold storage facilities provided are mainly in the nature of supporting services. For the purpose of levy such services are classifiable into two parts-

One is supporting services provided in relations to agriculture, forestry, fishing, animal husbandry which is exempt from tax under Tariff Entry 99.86 and whereas, the rest of the supporting services are subject to tax at 18% under Tariff Entry 99.97.99. The said Chapter Heading 99.86 explains various classes of support

services, which include loading, unloading, packing, storage, or warehousing of agricultural produces. The explanation appended to Notification No. 11 (Central Tax Rate) of 2017 dated 28th June, 2017 defines, 'agricultural produce' for the purpose of the present tariff entry in Clause VII to Explanation IV which reads as, "*Agricultural produce means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.*" A plain reading of the above definition assigned in the Notification clarifies that, "*Any produce out of cultivation of a plant on which no further processing is done or the processing which is usually done by a cultivator which doesn't alter its essential characteristics but makes it marketable for primary market*" is deemed to be treated as 'agricultural produce.' Similarly rearing of all life forms of animals (except horses) is also deemed to be treated as 'agricultural produce'.

- (iii) **Print Media-** Chapter Heading 99.83 deals with selling of spaces for advertisement in print media which attracts 5% tax whereas, for other professional, technical and business services, other than selling of spaces for advertisement in print media attracts tax at the rate of 18%. Advertisement here is defined as per Clause 2(a) of the Notification; "*Any form of presentation for promotion of or bringing awareness about an event, idea, immovable property, persons, service, goods or actionable claims through newspapers, television, radio or any other means, but does not include any presentation made in person.*"

Print media, for the present purpose means, book as defined in sub-section 1 of Section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow-pages and trade catalogues which are primarily meant for commercial purposes. Newspaper is defined as in sub-section 1 of Section 1 of the Press and Registration of Books Act, 1867.

## ISSUES, CHALLENGES AND CONTROVERSIES OF THE PAST AND PRESENT

1. When all the Tariff Entries under the GST enactments are aligned towards another legislature i.e., Customs Tariff Act, then interpretation applicable to the Customs Tariff Act alongwith their respective Amendments with respect to such entries will apply in full force to the GST enactments. Hon'ble Supreme Court in the matter of, '**State of Kerala vs. ATTESEE (Agro Industrial Trading Corporation) (1989) 72 STC**', held that, "*There is a distinction between referential legislation which merely contains a 'reference to, or citation of', a provision of another statute and a piece of referential legislation which incorporates within itself a provision of another statute. In the former case, the provision of the second statute, alongwith all its amendments and variations from time to time should be read into the first statute. In the latter case, the position would be as follows: Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:*
  - a. *Where the subsequent Act and the previous Act are supplemental to each other;*
  - b. *Where the two acts are in pari materia;*
  - c. *Where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual or unrealistic or impractical; and*
  - d. *Where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."*
2. Wherever the GST Schedule is aligned directly to the Customs Tariff entries, then there is no other alternate rather than to adopt the meaning assigned in the Customs Tariff Act and interpretation given by various authorities and courts for the said purpose. But, wherever the GST Schedule is not directly



aligned to the Customs Tariff Act, but some of the goods have been picked or chosen from the Customs Tariff have been placed in the GST Tariff, then the interpretation given in the Customs Tariff entries may not hold good.

3. While classifying the goods wherever ambiguities have arisen, Indian courts have adopted different tests for arriving to the true meaning and their placement in the Schedule Entries. Generally, the tests adopted are the popular meaning test, common parlance test, trade or commercial parlance test, technical or scientific meaning test, end-user test (a.k.a. dominant user test) and the test of product description. In construing the provisions of a statute, it is essential at the first instance to give effect to the natural meaning to the words therein, if these words are clear enough. It is only in the case of an ambiguity, that the court is in power to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration the other matters and circumstances, which leads to the enactment of the statute. In such circumstances, the court adopts these tests.
  - i. Popular meaning test implies the description of any commodity that is understood by the general public or is of common knowledge to the general public. E.g. Fruits, vegetables and other food items. This is also sometimes known as the common parlance test. Hon'ble Supreme Court while applying the common parlance test in the matter of ***Collector of Central Excise vs. Parle Export Pvt. Ltd. 75 STC 105*** has laid down that, "Words used in a provision imposing tax or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them."
  - ii. The trade and commercial parlance test adapted to the commodity refers to a commodity that is generally understood in a particular trade or class of business. E.g. Whether green tea leaves are flowers or plants? Hon'ble Kolkata High Court in the matter of ***Ashwini Kumar & Co. vs. CTO (114 STC 318)*** held that, "*The expression green tea has a meaning of its own in its trade parlance.*"

*Anyone associated with such trade will not ideate green tea leaves just as part of comprehensive botanical concept of plants. It is nothing but raw material for manufacturing of tea.”*

- iii. The common parlance test though accepted to be a reliable test ordinarily is not the exclusive test. Wherever generic expressions of scientific or technological meanings are used, then the technical meaning would be more relevant. Hon'ble Supreme Court in the matter of, **'B.P.L. Pharmaceuticals Ltd. vs. Collector of Central Excise Vadodara 104 STC 164 (SC)'** adapted the scientific and technical meaning in order to classify if Vicco toothpaste, tooth powder and cream items were drugs or cosmetics.
- iv. An example of dominant user test can be seen while giving exemptions to the balloons as children's toys as laid down by Hon'ble Karnataka High Court in the matter of **'Kundanmal Ganeshmal & Brothers 96 STC 149'** who held that, "Balloons are primarily used as toys by children though sometimes they are also used for other purposes like decoration. The decorative use of balloon is only incidental because of the colour given to the balloon. The dominant purpose of the balloon has to be taken into consideration." As held in the matter of **Commissioner of Central Excise, Cochin vs. Mannampalakkal Rubber Latex Works (2015) (7 SCC 124)**, it was held that, "*Excise-classification of goods- 'composition test' and 'end user test'- application of- classification of goods to be made in accordance with 'composition test' unless relevant Entry specifically states that classification shall be made by applying 'end user test'- Note 5 (b) to Ch. 40 of 1985 Act- Applicability- Revenue declaring latex (rubber) based adhesive as falling under Heading 35.06 since same is sold to leather footwear manufacturers as adhesive.*"
- v. Wherever two competing entries are available in the Schedule Entry, i.e., special entry and general entry, then the impugned product and its classification is a greater task. The normal rule is that each entry enumerating the goods should be given its natural or normal meaning as understood by those who deal with those and that

if there are two entries where one entry is broader and covers an entire class of goods and the other entry covers some of the goods out of the said class, the latter entry should be considered as special entry in respect of those goods. Sometimes if the goods are falling in two entries, which are subject to tax at two different rates, the theory of specific entry will prevail over general entry. For e.g. gold/silver plated idols frames will fall under both, gold entry, which is subject to tax at 3% as well as under frame or metal entry, which is subject to a higher rate. In such circumstances the specific entry will definitely be the entry of articles of gold and silver which is required to be adopted. Similarly, a carpet which is fit into the car as per the specifications and design given by the car manufacturer; would be an accessory of cars and shall fall under the specific entry of accessories of cars rather than being classified under the general entry of carpets. However, in such circumstances, one has to look into the interpretation given in the General or Specific Explanatory notes to the HSN, (WCO).

- vi. The test of product description is used when it relates to a product or a class of products and the classification is made on the basis of the products. For e.g., articles primarily made out of plastic, articles primarily made out of rubber, petroleum products, products made out of aluminum, etc.
4. There are various controversies which have come before different courts in relations to classification of goods and services. Some of the precedents are enumerated below:
- i. As explained in the above paragraph, some goods are not at all specified in the tariff entries of GST, even though it has placement in the Customs Tariff Act, 1975. Then, in such circumstances an opinion may be deduced that no tax is chargeable to such items. But, Hon'ble Supreme Court in the matter of **'M.P. Agencies vs. State of Kerala (2015) (7 SCC 102)'** has held that, *"As per the said Rules of Interpretation, where the commodities have been given HSN numbers, the same meaning would be given for classification under the Customs Tariff Act, 1975 and*

*judgments applicable to corresponding entries in Customs Tariff Act- Where commodities are not assigned with any HSN number, they are to be interpreted as understood in common or commercial parlance- In case of inconsistency between meaning of commodity without HSN number and commodity with HSN number, commodity without HSN number should be interpreted by including commodity in that entry, which has been given HSN number.”*

- ii. The principle laid down as above, clearly states that if the HSN number is clear, then it is necessary to adopt the meaning for determining the purpose of tax rate, otherwise they are to be interpreted as understood in common or commercial parlance or the other necessary rules of commodity classification.
- iii. So far as the Tariff Entry of ‘*agricultural produce*’ is concerned, it depends upon the facts and circumstances of each case, in which the service provider is storing, irrespective of their tax rate applicable in any other entries. For example, ‘cashew nuts’ whether or not shelled or peeled falls within the 5% tax rate in Schedule I in Serial No. 27. But is nonetheless an agricultural produce for the purpose of supporting services to agricultural produce under Chapter Heading No. 99.86. Similarly, cinnamon, cinnamon tree flowers, cloves, nutmeg, mac and cardamom, seeds of anise, badian, fennel, coriander, cumin, ginger other than fresh ginger etc. that fall under Serial No. 40 to 44 of Schedule I do not cease to fall in the characteristics of agricultural produce for the purpose of Tariff Entry 99.86. Hon’ble Uttarakhand High Court, Nainital Bench, in the matter of, ‘**CSTUP vs. Yeast Hope Town Company Ltd. 142 STC 319**’ held that, “*green leaves without grading and processing has no market value unless it is graded and processed, the green leaves get rotten. In view of the position, the tea graded and roasted by the self-producing tea company remains as agricultural produce.*”

However, CBEC has come up with a clarification by way of circular in respect of support services by way of

Circular No. F. No. 354/173/2017 dated 15th November, 2017 which clarifies as under:

<b>Sr. No.</b>	<b>Issue</b>	<b>Comments</b>
1.	Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	<p>1. As per GST notification No. 11/2017-Central Tax (Rate), S. No. 24 and notification No. 12/2017-Central Tax (Rate), S. No. 54, dated 28th June 2017, the GST rate on loading, unloading packing, storage or warehousing of agricultural produce is Nil.</p> <p>2. Agricultural produce in the notification has been defined to mean “any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market”</p> <p>3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same.</p> <p>4. Thus, green tea leaves and not tea is the “agricultural produce” eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.</p> <p>5. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.</p>

Sr. No.	Issue	Comments
		<p>6. Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.</p> <p>7. In view of the above it is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT(Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/Sales Tax is no more relevant.</p>

- iv. Even another test can be adapted as to where a particular commodity is classified specifically in any of the Schedule i.e., dominant nature test by applying end user test. As held in the matter of ***Commissioner of Central Excise, Cochin vs. Mannampalakkal Rubber Latex Works (2015) (7 SCC 124)***, it was held that, “Excise-classification of goods- ‘composition test’ and ‘end user test’- application of- classification of goods to be made in accordance with ‘composition test’ unless relevant Entry specifically states that classification shall be made by applying ‘end user test’- Note 5(b) to Ch. 40 of 1985

*Act- Applicability- Revenue declaring latex (rubber) based adhesive as falling under Heading 35.06 since same is sold to leather footwear manufacturers as adhesive- Sustainability- Rubber adhesive being distinct from other adhesives, Ch. 40 applies to instant case since it refers to rubber and articles thereof while Ch. 35 deals with glues and adhesives- Furthermore, Note 5(b) to Ch. 40 confirms that test of composition is the test to distinguish rubber based adhesives from non- rubber based adhesives or other adhesives- Also after applying composition test, rubber content in the product in question is above 90%- Thus, held, latex based adhesives manufactured by assessee fall under Heading 40.01 and not under Heading 35.06- Central Excise Tariff Act, 1985- Heading 40.01 or Heading 35.06.”*

- v. In a situation where the common parlance test or user test or any other test is not decisive, sometimes we have to adapt the dictionary meaning in order to find out under which Tariff Entry the product shall be classified. For e.g., ‘Yeast’ which has various chemical compositions, is not fungi and is also not a plant. Hon’ble Apex Court in the matter of, **Mayuri Yeast India Pvt. Ltd. vs. State of UP and Another (2008) (14 VST 259) (SC)**, held that, “A dictionary meaning, in a case of this nature, is required to be considered with a view to reconcile and harmonize the tariff entry and only because an article is exclusively used for manufacture of a particular item, the same should not be held to be decisive.” It was also held that, “The meaning of the word ‘of’ used in an item in a fiscal statute must be considered having regard to the intention of the maker thereof. The court shall, for the said purpose, put itself in the chair of the Legislature. It would presume the ‘legislation’ to be reasonable.”
- vi. Hon’ble Supreme Court in the matter of, **‘M/s Gulati & Co. vs. The Commissioner of Sales Tax, UP, Lucknow (Civil Appeal No. 1779 of 2004 dated 20.12.2013)’**, has held that, “The issue that falls for our consideration and decision in these civil appeals is whether food colours and food essences used in the manufacturing of foodstuffs and

*food products would fall under Entry 56 of the Notification No. ST-2-7218/10/6 (43)/77, dated 30/09/1977.”*

In the same matter it was also held that, *“In interpretation of fiscal statutes, the entries must not prima facie be construed in their technical or scientific import but must be understood in its ordinary sense. Therefore, the expression ‘foodstuff’ must receive its ordinary and natural meaning, i.e. to say a meaning which takes account of and accords with the day to day affairs of life. By ‘foodstuffs’ is meant food of some kind. (Sat Pal Gupta vs. State of Haryana (1982) 1 SCC 610; ESI Corpn. vs. TELCO (1975) 2 SCC 835; State of Orissa vs. Titaghur Paper Mills Co. Ltd. (1985) Supp SCC 280). Since, the word ‘foodstuffs’ which occurs in Entry 56 has not been defined under UP Sales Tax Act, the legislature must be taken to have used that word in its ordinary dictionary meaning. While we are mindful that though the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, in doing so the court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the court would, therefore, have to select the particular meaning which would be relevant to the context in which it has to interpret that word.”*

In the same case it was further held that, *“In our considered view, the words with which we are concerned must be construed in the sense which is imputed to them by the persons who deal in and who consume such articles and therefore, we would now explore the meaning and usage of terms, ‘foodstuffs’, ‘food colors’ and ‘food essences’ in their common parlance.”*

- vii. Sometimes tariff entries refer to two words, i.e., ‘types and forms’. Such words do not have the same meaning. In this context, Hon’ble Supreme Court in the matter of **‘State of Jharkhand & Ors. vs. LA Opala R G. Ltd. (2014) (70 VST 342) (SC)’** has held that, *“In common parlance, the two words ‘type’ and ‘form’ are not of the same import. ‘Types’ are based on the broad nature of the item intended to be classified and in terms of ‘forms’, the distinguishable*



*feature is the particular way in which the item exists. An example would be the item 'wax.' The types of wax would include animal, vegetable, petroleum, mineral or synthetic wax whereas the form of wax would be candles, lubricant wax, sealing wax, etc. Therefore it cannot be said that the expression 'types of glass' will refer to or include 'forms of glass'."*

- viii. The concept of manufacturing also plays a vital role in the classification of the Tariff Entries. The raw materials maybe falling in one Tariff Entry and the finished products emerging out of the manufacturing process may fall under a different Tariff Entry. Every process is not a process of manufacturing. The term, 'manufacturing' is defined u/s. 2(72) of the CGST Act, 2017 which is equally applicable to the SGST Act, 2017 on account of parallel definitions in the local Acts. 'Manufacture' for the purpose of the Act means, "processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term manufacture shall be construed accordingly." For the purposes of the Act, 'input' as defined in Section 2(59) of the CGST Act, 2017 means, "any goods other than capital goods used or intended to be used by a supplier in the course of or furtherance of business."

### Scope of Residuary Entry

- a. Serial No. 453 under Schedule III of Notification No. 1/2017 (Central Tax Rate) dated 28.06.2017 has incorporated a Residuary Entry which is subject matter of levy at 18% and reads as under:

Sr. No.	Chapter/Heading/ Sub-heading	Description of goods
453.	Any Chapter	Goods which are not specified in schedules I, II, IV, V or VI

- b. The scope of residuary entry is very limited and will apply remotely only if the product does not fall under any of the Schedule Entry. Hon'ble Supreme Court in the matter of

***'Indian Metals & Ferro Alloys Ltd. vs. Collector of Central Excise (1991) 51 ELT 165 (SC)'*** has held that, "One more aspect of the issue should be adverted to before we conclude. The assessee is relying upon a specific entry in the tariff schedule while the department seeks to bring the goods to charge under the Residuary Item No. 68. It is a settled principle that unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item. This certainly is not the position in this case, particularly in the light of the department's own understanding and interpretation of item 26AA."

- c. In the matter of ***'Mayuri Yeast India Pvt. Ltd. vs. State of UP and Another (2008) 14 VST 259 (SC)'*** it was held that, "If there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

It was also held in the same case that, "Common parlance or commercial parlance test, we may notice, has been applied recently in ***HPL Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208*** stating:

"It was submitted by the learned Senior Counsel appearing for the Revenue that the goods were classifiable under heading 38.23 (now 38.24) as 'residual products of the chemical or allied industries, not elsewhere specified or included' which was the last item covered by heading 38.23. The said heading 38.23 is only a residuary heading covering residual product of chemical or allied industries 'not elsewhere specified or included.' In the present case since the goods were covered by a specific heading, i.e., heading 25.01, the same cannot be classified under the residuary heading at all. This position is clearly laid down in rule 3(a) of the Interpretative Rules set out above. As per the said interpretative rule 3(a), the heading which provides the most specific description shall be preferred to the heading providing a more general description. This position is also well settled by a number of judgments of this court. Reference may be made to ***Bharat Forge & Press***

***Industries (P) Ltd. vs. Collector of Central Excise (1990) 1 SCC 532.*** It was observed in paragraph 4, inter alia as under:

*The question before us is whether the department is right in claiming that the items in question are dutiable under tariff entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariffs should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item.”*

### **Mixed and composite supply:**

1. Wherever mixed supplies of goods or mixed supplies of services are involved, then Section 8 of the CGST Act as well as SGST Act provides substantive provision of mechanism to determine the tax rate and its liability. Section 8 reads as under:

***The tax liability on a composite or a mixed supply shall be determined in the following manner namely-***

- a. ***A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and***
- b. ***A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.***

- i. Section 2 (30) of the CGST Act, 2017 reads as under:

***Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.***

*Illustration-* Where goods are packed and transported with insurance, the supply of goods, packing

materials, transport and insurance is a composite supply and supply of goods is a principal supply.

ii. Section 2(74) of the CGST Act, 2017 reads as under:

***Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.***

***Illustration- A supply of package consisting of canned foods, sweet, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.***

iii. Section 2 (90) of the CGST Act, 2017 reads as under:

***Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of the composite supply is ancillary.***

2. Hon'ble Supreme Court in '**State of Punjab vs. Nokia India Pvt. Ltd. (2015) 77 VST 427 SC**' held that, "Battery charger cannot be held to be a composite part of a cell phone but is an independent product which can be sold separately without selling the cell phone. In the judgment Rule 3(b) of Rules of Interpretation of the First Schedule to the Customs tariff Act, 1975 was taken into account while deciding the issue. Entry 60(6)(g) of Schedule B to the Punjab Value Added Tax, 2005 relating to cell phone does not mention accessories for the purpose of taxing the product at the rate of 4%. These are to be charged at 12.5% under Schedule F to the Act which covers all residuary items not falling in any of the classifications in other Schedules of the Act. Schedule B does not indicate that the cellular phone includes accessories like the chargers either in the HSN Code or by elaborating in words. A battery charger is not a part of the mobile or cell phone. If the charger were a part of the cell phone, then the cell phone could not

*be operated without using the battery charger. But in reality, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from other means also such as laptop computer without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone. A charger is not an integral part of the mobile phone making it an item of composite goods. Merely, making a composite package of the cell phone charger will not make it composite goods for the purposes of interpretation of the provisions.”*

3. The term used in the definition of composite supply as above leans towards the term, ‘*naturally bundled and supplied in conjunction with each other,*’ whereas in the definition of mixed supply, it reads as, ‘*conjunction with each other.*’ Herein, in the mixed supply definition, the term, ‘*naturally bundled*’ is silent. Therefore, in order to be a composite supply, the supply must be supplied in the ordinary course of business in such a manner that not only should it be naturally bundled, but also conjoined with each other. For e.g., supply of books and materials by a professor while rendering services of teaching or if a doctor provides injections and medicines while treatment to the patient then, the service rendered and injections and medicines provided are naturally bundled.

### **Miscellaneous Issues**

1. Section 7(1)(d) declares by way of Schedule II appended to the CGST Act, 2017 certain composite supply of goods and services like works contract, lease, supply of food and other articles for human consumption, etc. which are deemed to be treated as supply of services.
2. As per Section 8 of GST Compensation to States Act, 2017, a separate compensatory schedule has been prescribed which is either on basis of value or quantity and for determination of value it has been referred to Section 15 of CGST Act.
3. Section 16 of the IGST Act, 2017 deals with ‘*zero rated supplies*’ which consists of “*supplies of goods and services for export or a Special Economic Zone developer (SEZ) or a Special Economic Zone unit. (SEZ) Notwithstanding that such supply maybe an exempt supply.*”

## AUTHOR'S VIEW ON THE FOLLOWING QUERIES

With the help of illustrations, we will understand the interpretation of entries in the Tariff. They are as under:

- a. ***Whether gold plated idols, coins and picture frames are articles of gold and jewellery and under which Tariff Entry will the same fall?***

Medals of gold and silver having images of Gods, Goddesses, saints, temples and historical sites are not items of numismatic interest and so, they are not to be classified under Heading 97.05 *ibid* having been overruled, the goods will have to be classified under Chapter 71 of HSN *ibid* and so they are eligible to benefit under Notification No. 80/97- Cus and Notification No. 62/2004 Cus.- ***'ICICI Bank Limited vs. Commissioner- 2014 (312) ELT 366 (Tribunal- Chennai).'***

Even the impugned product can fall under Chapter Heading 71.14 of HSN which specifies, *"Articles of goldsmiths 'or silversmiths, wares and parts thereof, of precious metals or of metal clad with precious metals."*

This heading covers articles of goldsmiths or silversmiths, wares as defined in Note 10 with this Chapter wholly or partly of precious metals or metal clad with precious metal. In general, these goods are larger than articles of jewellery of heading 71.13. They include

.....(A) to (D).....

- (E) Other articles for domestic or similar use, for example, busts, statuettes and other figures for interior decoration; jewel cases; table center-pieces, vases, jardinières; **picture frames**; lamps, candelabra, candlesticks, chandeliers; mantelpiece ornaments, decorative dishes and plates, medals and medallions (other than those for personal adornment); sporting trophies; perfume burners, etc.
- (F) Articles for religious use such as reliquaries, chalices, ciboriums, monstrances, crucifixes, candlesticks, lamps.

The General Note No. 10 refers as above to Chapter Heading 71 of HSN reads as, *"For the purpose of heading 71.14 the expression articles of goldsmiths and silversmiths, wares*

*includes such articles as ornaments, table-ware, toilet-ware, smokers, requisites and ‘other articles of household, office or religious use.’”* The above term in the Explanatory Notes, picture frames confirms that the impugned products in question will squarely come within the Chapter Heading 71.14 of HSN.

b. ***Whether providing cold storage facilities is a service relating to immovable property in view of Section 12 of IGST Act, 2017?***

The facts emerging herein are that, the supporting services provided are in the nature of cold storage services which extend the durability of the products. There are 2 types of storage facilities, one that is attached and embedded to the Earth and the other, which is mobile refrigerator or cold storage. We are concerned with the first one. The refrigerating system which is embedded or attached to the Earth is in the nature of immovable property. As per Section 3 sub section 26 of the General Clauses Act, immovable property shall include land, benefits to arise out of land and things attached to the Earth or permanently fastened to anything attached to the Earth. Attached to Earth means rooted in the Earth like trees, shrubs and embedded to the Earth indicates walls and buildings attached to what is embedded for the permanent beneficial enjoyment of that to which it is attached also falling in the character of immovable property as per the Transfer of Property Act or the Registration Act as the case maybe. Since, our GST legislation doesn't specifically deal with the term immovable property or assign any meaning to it, we have to take the aid of the aforesaid meaning from Dictionary or from the judgments decided in the past. Hon'ble Supreme Court in, ***'Duncan Industries Ltd. (2000) 1 SCC 633 and Sirpur Paper Mills Ltd. (1998) 1 SCC 400'*** held that, *“Plant and machinery embedded in the Earth are immovable properties.”* Therefore, in our opinion the entire cold storage facility squarely fulfills the characteristics of immovable property stated as above so as to fall under the purview of Section 12 of the IGST Act. Thus, the place of supply of services as stated is the place where the immovable property is located and accordingly the Tariff Entry will be classified.

Similarly, providing cranes and other construction equipment on rent for the construction of immovable property and providing of engineering and architectural services for the same, it will be deemed to be treated as providing services to immovable property. The incident arises at the place where the immovable property is situated. Same applies to hotels, eateries, restaurants, etc.

- c. ***Whether mounting a fabricator to an insulated boom with bucket on an Indian chassis that is usually purchased from local manufacturers and the final product known as insulated bucket truck is then sold for the purpose of cutting trees, cutting wires and fixing cable towers, etc. amounts to manufacturing and what would be its Tariff Entry?***

The term, 'manufacture' is defined u/s 2(72) of the CGST Act which means, "processing of raw materials or inputs in any manner that results in emergence of a new product having a distinct name, character and use and term 'manufacture' shall be construed accordingly." 'Input' for the purpose of aforesaid definition as defined u/s 2(59) means, "any goods other than capital goods used or intended to be used by a supplier in the course of or furtherance of business." 'Capital goods' as u/s 2(19) means, "goods the value of which is capitalized in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course of or in the furtherance of business." In the transaction carried out by the fabricator, the equipment is imported and an indigenous chassis is purchased and in the process of build up an insulated bucket truck is prepared and sold. The equipment of insulated bucket and the chassis truck are two inputs and in the fabrication process, it is converted into an insulated bucket truck. Therefore, the inputs used and the output emerging are two different commercial commodities. Hence, it fits into the parameter of the term, 'manufacture' as defined u/s 2(72) of the CGST Act, 2017. Hon'ble Supreme Court, in the matter of '**Commissioner of Central Excise, Bangalore vs. United Spirits Limited & Anr. (2017) 3 SCC 166**' held that, "It is well settled in law that 'manufacture' implies change, but every change is not manufacture, such change is normally a



result of treatment, labour and manipulation. There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.” In **‘M/s Hyva (India) Pvt. Ltd. vs. CCE & ST Jamshedpur (2014) 4 ECS 139 Tri. Kol.’** it was held that, “According to Chapter Note V of Chapter 87 of the Central Excise Tariff, building of body or fitting of a structure or equipment on the chassis falling under Heading 8706, amounts to manufacture of motor vehicles. We find that there is no sale of motor vehicles by the appellants either to TML or to any other customers. These vehicles were for the first time sold by TML from their depots and therefore, the clarification that the appellants sold the body, is of no help to them. We find that the chassis were supplied to the appellants free of cost. On fabrication of components of the body, it results into emerging a final product namely, motor vehicle which is distinct from the chassis. Since the said motor vehicles were not sold by the appellants and sold for the first time by TML, the value was to be determined in this case under Rule 10A of the Central Excise Valuation Rules, which provided for determination of value of the final products manufactured on behalf of the principal manufacturer.”

On careful analysis of the term, 'manufacture' and the aforementioned two authorities, I have no hesitation to state that, the activity carried out by the fabricator amounts to manufacture. Otherwise also, the equipment insulated boom with bucket, which is imported falls under the Tariff Entry 84.26, whereas the chassis truck which is a special purpose motor vehicle falls under Tariff Entry 87.06. Both equipment when combined together, would lead to the emerging of new equipment that is known as special purpose motor vehicle falling within the parameter of the residuary entry of 87.05. To conclude, fabricating and assembling an insulated boom with bucket in a motor vehicle chassis amounts to manufacture and the final product, viz. insulated bucket truck sold is a different commercial commodity.

d. ***Under which Schedule Entries of the Notifications will the monthly contribution charged by the society to the members be subject to tax under GST?***

In serial no. 33, under Tariff Heading 99.95 of Notification No. 11 of Central Tax (Rate) dated 28th June, 2017, services of membership organization are subject to tax @ 18% (CGST and SGST). However, an exemption is given up to ₹ 5,000/- in Notification No. 12 of 2017. In serial No. 77, under Notification No. 12 of Central Tax (Rate) dated 28th June, 2017, which is categorized under Tariff Heading 99.95, the said tariff entry reads as, "*Services by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by Way of reimbursement of charges or share of contribution-*

*(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its member in a housing society or residential complex."* This is exempted from tax. Therefore, a charge of ₹ 5,000 or more by the society to their members is subject to levy.

e. ***Whether the limit per month of ₹ 5,000/- as stated in the above question excludes:-***

i. Property Taxes

- ii. Water charges
- iii. Electricity charges?

The clarification issued by way of FAQ dated 5th September, 2017 by CBEC supports that such charges shall be excluded for computing ₹ 5,000/- limit.

f. ***Issues relating to food served for consumption and supply of food which is ready to be served.***

The supply of services along with articles for human consumption are classified as services and are subject to tax under Chapter Heading 99.63 which read as follows:

(a) ***Up to 14th November, 2017:***

(i) *Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, neither having the facility of air- conditioning or central air- heating in any part of the establishment, at any time during the year nor having license or permit or by whatever name called to serve alcoholic liquor for human consumption..... 12% tax.*

(ii) *Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, having the facility of air- conditioning or central air- heating in any part of the establishment, at any time during the year..... 18% tax.*

(b) ***W.e.f. 15th November, 2017-*** *Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess,*

*canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent..... 5% tax.*

In the Schedule Entries mentioned above, if food or any other articles for human consumption are supplied in any restaurant or eating joints, then they shall deem to be treated as supply of services and would fall within the ambit of the Services Tariff Entries stated as above. Since the term 'eating joint' is not defined under CGST or SGST Act, 2017, dictionary meaning can be used. '*Concise Oxford Dictionary Tenth Indian Edition*' defines the term, 'joint' as, "An establishment of a specified kind, e.g. a burger joint." Therefore, any establishment where food or any article for human consumption is supplied, they shall be either termed as restaurant or an eating joint. In the VAT regime, a very similar issue had come up before Hon'ble Bombay High Court, in the matter of '**Chavan Food vs. Commissioner of Sales Tax in Sales tax Appeal No. 5 of 2008 dated 15th April, 2010.**' In the said matter M/s Chavan Food carried out manufacture and sale of ice- cream at Pune. The issue before the lower authorities was whether the sale of ice- cream by the appellant would be subject to tax as simple sale falling under entry 107 (II) (F) @ 4% or would fall under the residuary entry being ready to serve food for consumption and be subject to tax @12.5%. Hon'ble Bombay High Court held that, "*In the present case, explanation to entry 11 stated that items referred in clauses (a) to (f) would not be covered by scope of this entry when those were served for consumption. It was crystal clear from the explanation that the intention of the legislation was that if the food stuffs and food were served for consumption then only the same was not covered by entry 11(a) to (f). In the present case the appellants sold the goods to the dealers or supplier and not to the consumers directly for*

*consumption. When the expression ready to serve food was not defined under this Act, the said expression ought to have been interpreted in the manner as understood in common parlance. In common parlance, expression ready to serve food contemplated goods in the hands of the outsiders like hotels, shops and those who were dealing directly with the consumers by serving food. In the present case, both the authorities have erred in coming to the conclusion that the word ready contemplates finished product which could be consumed directly without further process of cooking, but they failed to consider that the appellants were manufacturers/dealers, they are selling the goods directly to the consumers. Therefore, sale in their hand was covered by entry no. C-107 (11)(f).” The impugned transactions will be covered under Chapter Heading 99.63 and is subject to tax @ 5% w.e.f. 15th November, 2017 and prior to 15th November, 2017, 12% or 18% as the case may be on the basis of facility of A.C. and no A.C.*

**g. *Whether transfer of tenancy right and receipt of premium is subject to GST and at what rate?***

Vide Circular No. 44 dated 2nd May, 2018 issued by CBEC the above query has been answered and the Circular reads as under:

***Subject: Issue related to taxability of ‘tenancy rights’ under GST***

- 1. Doubts have been raised as to,- (i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate? (ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?*
- 2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as “pagadi system” is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against*

*payment of tenancy premium(pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.*

3. *As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services*
4. *The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.*
5. *To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and*

*taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.*

6. *Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.*

Hon'ble Bombay High Court in the matter of, '**Builders Association of Navi Mumbai vs. Union of India & Ors. (2018) 53 GSTR 374 (Bom)**' has held that, "One time premium amount received by the CIDCO from the Petitioner for entering the lease for a period of 60 years is subjected to GST."

- h. ***Whether the classification of goods or rate of tax issue under the GST can be directly taken to the High Courts or the Supreme Court?***

When an alternate remedy is available in the statute, such issues cannot be generally entertained by the Hon'ble High Courts by way of Writ Jurisdiction. While entertaining such issues, under the IGST Act, 2017, Hon'ble Madras High Court in the matter of, '**Jaap Auto Distributors vs. The Assistant Commissioner of Customs**' has taken the same view. In that matter it was held that, "*The Petitioner has challenged the issue of rate of tax under IGST Act, 2017 against the order in original passed by the Customs Authority who has denied the benefit of notification dated 28/06/2017 under Integrated Tax (Rate) Notifications. It was claimed that the correct IGST should be 12% instead of 18%. Hon'ble Madras High Court held that the issue of classification of goods, being a factual exercise has to be necessarily agitated before the Appellate Authority. Needless to state that, in the appeal petitions, the Petitioner is entitled to canvass all points including the grounds of lack of jurisdiction which is sought to be canvassed before this Court*



*for the first time. It is open to the Petitioner to file an appeal beyond limitation period.”*

## ADVANCE RULING

1. ***Gujarat Authority for Advance Ruling Goods and Services Tax, M/s Power Build Private Limited dated December 13, 2017-*** *The applicant has raised following question for advance ruling in their application:-*

*What is the HSN Code and GST Tax Rate of a product ‘Geared Motor’?*

*Thus, the Tariff Heading 8483 does not cover Gear Boxes or other variable speed changers combined with a motor. Motor remains classified under Tariff Heading 8501 even when they are equipped with pulleys, with gears or gear boxes, or with a flexible shaft for operating hand tools.*

*Therefore, on the basis of the Explanatory Notes of HSN under Tariff Heading 8483 and 8501, it is evident that the product ‘Geared Motor’, which is an assembly product of the ‘Electric Motor’ and ‘Gear Box’, will appropriately fall under Chapter Heading 8501 of the Customs Tariff Act, 1975 and we hold so.*

2. ***Authority for Advance Ruling, Gujarat, Guru Cold Storage (P.) Ltd., In re, December 13, 2017-*** *The applicant, M/s. Guru Cold Storage Pvt. Ltd., has referred to, which inter-alia provides rate of tax as NIL for ‘support services to agriculture, forestry, fishing, animal husbandry’, and submitted that in their opinion, ‘Agricultural Produce’ includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetables fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco, and intra-state support services to agricultural produce by way of loading, unloading, packing, storage or warehousing of agriculture produce is chargeable at NIL rate. It is further submitted that as per their understanding of the provisions of the CGST Act and the SGST Act (Gujarat), there is no tax on agricultural produce unless the goods are branded with*



*registered trademark. Thus, the services related to storage of the goods mentioned above, either in bulk packing or small or retail packing with or without name or brand name, which is not registered under the Trade Mark Act, 1999 where no further processing is done or such processing is done which does not alter its essential characteristics but makes it marketable for primary market shall be charged at NIL rate as the same have not been branded with a registered trademark.*

*The applicant has raised the following question for advance ruling:—*

*Whether all cereals, pulses, spices, copra, jaggery (Gur), groundnuts (with or without shell), groundnut seeds, turmeric dried and ginger dried (soonth), cashew, almond, kismis, jardalu, anjeer (fig), date, ambli foal are covered under the definition of 'Agriculture Produce' as defined under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.*

*If the answer to above point is affirmative, then whether the taxability of goods mentioned above point changes if they are received for storage either in bulk packing or small or retail packing with or without name or brand name which is not registered under the Trade Mark Act, 1999 where no further processing is done or such processing is done which does not alter its essential characteristics but makes its marketable for primary market.”*

*We also observe that the applicability of Goods and Services Tax on warehousing of agricultural produce has been clarified vide Circular No. 16/16/2017-GST dated 15.11.2017 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs (Tax Research Unit).*

*Pulses (commonly known as 'Dal') (de-husked or split), jaggery, processed dry fruits such as processed cashew nuts, raisin (kismis), apricot (jardalu), fig (anjeer), date, tamarind (ambali foal), shelled groundnuts/groundnut seeds, and copra are not agriculture produce as defined under Notification No. 11/2017-Central Tax (Rate). 'Cereal' on which any processing is done as is not usually done by a cultivator or producer will fall outside the definition of agriculture produce.*

*Processed spices including processed turmeric and processed ginger (soonth), are not agriculture produce as defined under Notification No. 11/2017-Central Tax (Rate). However, groundnuts with shell, turmeric and ginger on which no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but make it marketable for primary market would fall within the definition of agriculture produce.*

*Whole pulse grains such as whole gram, rajma etc. and 'cereal 'on which no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market, fall under the definition of agriculture produce as defined under Notification No. 11/2017-Central Tax (Rate).*

3. **Authority for Advance Rulings, Kerala, JJ Fabrics, In Re, May 29, 2018-** *M/s. JJ Fabrics, Ernakulam, manufacturer of carry bags made of poly propylene non-woven fabrics, has preferred an application for Advance Ruling on the rate of tax of the same.*

*The Test Report of the Centre for Biopolymer Science & Technology reveals that the product of the applicant i.e., non woven carry bag is made of polypropylene. In Customs Tariff Act, sacks and bags made of polypropylene strip or the like is classified under Chapter 63 of the Act. The relevant portion is extracted below:*

6305	SACKS AND BAGS, OF A KIND USED FOR THE PACKING OF GOODS
	– Of man-made textile materials:
6305 33 00	– Other, of polyethylene or polypropylene strip or the like

*The above HSN code appears both in Schedule I and Schedule II of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 and State Notification 360/2017 dated 30.06.2017 based on the sale value of the product. The entry reads as under:*

SCHEDULE 1

224	63 [other than 6309]	other made up textile articles, sets, of sale value not exceeding ₹ 1000/- per piece
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SCHEDULE 2

171	63 [Other than 6309]	Other made up textile articles, sets of sale value exceeding ₹ 1,000/- per piece [other than Worn clothing and other worn articles; rags]
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*In the present case, since the sale value of non-woven carry bags made of polypropylene is less than ₹ 1,000/- per piece, it will attract tax @ 5% vide entry No. 224 of schedule 1 of both CGST and SGST notification.*

*In the light of the above, we rule as under.*

*Carry bags made of polypropylene non-woven fabrics is classified under entry 224 of Schedule 1 of the Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 and State Notification 360/2017 dated 30.06.2017, and hence taxable @ 5% [SGST -2.5%; CGST-2.5%]. .*

4. **Authority for Advance Rulings, Gujarat, Rishi Shipping., In Re, March, 20, 2018-** *The applicant M/s. Rishi Shipping has submitted that the company is a Cargo Handling company operating at Kandla Port Trust under stevedoring license issued by Kandla Port and provide Cargo Handling Service which consists of loading/unloading; providing space for storage and its further forwarding as per direction of importer/exporter. The applicant has submitted that they do not have their own warehouse/godown space. They have occupied the same from Government/Private parties. As a part of their services, they provide service of warehouse/space on rent to their customers, where they store imported agricultural commodities. The applicant has requested for advance ruling on the applicability of GST for invoices raised to their clients for storage charges for storing their imported agri product in godowns at Gandhidham*

*after custom clearance from port & shifted at Gandhidham for storage in their godown at distance of 10/12 kms from Port.*

*In this regard, we observe that there is difference between 'storage or warehousing' service and 'renting of storage premises' service. The 'storage and warehousing service' provider normally make arrangement for space to keep the goods, loading, unloading and stacking of goods in the storage area, keeps inventory of goods, makes security arrangements and provide insurance cover etc. In a case where a person only rents the storage premises, he does not provide any service such as loading/unloading, stacking, security etc. Mere renting of space cannot be said to be in the nature of service provided for storage or warehousing of goods.*

*The applicant has submitted in the application that as a part of their services, it provides service of warehouse/space on rent to their customers, where they (customers of applicant) store imported agricultural commodities. From the nature of service provided by the applicant, as described in the application, it is clear that the applicant only rent the storage premises. Once the storage premises is rented by the applicant to its customers, what use the customer makes of such premises doesn't have any bearing on the nature of service provided by the applicant.*

*Therefore, taking all these aspects into consideration, we hold that the applicant is required to pay Goods and Services Tax at 18% (CGST 9% + GGST 9% or IGST 18%) for aforesaid activity carried out by them classifiable as 'Rental or leasing services involving own or leased non-residential property' (Service Accounting Code – 997212).*

*The service provided by M/s. Rishi Shipping (GSTIN 24ABCPM8333P1ZA) is classifiable as 'Rental or leasing services involving own or leased non-residential property' (Service Accounting Code – 9972) leviable to Goods and Services Tax @ 18%.*

5. **Authority for Advance Rulings, Gujarat, Docsun Power (P) Ltd., In Re, March 20, 2018-** *The applicant, M/s. Docsun Power Pvt. Ltd., has submitted that the Company is carrying out manufacturing, assembling, fitting, repairing, renovation and installation of all kinds of 'Earthing Products' for electrical and*

*electronic equipments, used for earthing purpose in industries, common buildings and other places. The materials required for manufacturing of 'Earthing Products' consists of Mild Steel (MS) and Stainless Steel (SS), in solid rods and pipes of various sizes. The applicant is also carrying on business in Back Fill Compound (BFC). The applicant manufactures Earthing Pipe, Earthing Rods, Lightning Arrester and Back Fill Compound. The applicant also provides installation work for Earthing and Lightning Arresters fitting and renovation.*

*The applicant has raised the question of determination of classification of the products manufactured and service provided by them.*

*It is observed that the product 'Back Fill Compound' is prepared by mixing Bentonite Powder, Wood Charcoal Powder and Graphite Powder. Tariff Heading 3824 covers 'Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included'. Accordingly, the product 'Back Fill Compound' merit classification under Tariff Heading 3824.*

*It is further observed that Tariff Heading 2508 covers 'Other clays (not including expanded clays of heading 6806), andalusite, kyanite and sillimanite, whether or not clacined; mullite; chamotte or dinas earths. Bentonite (Crore or other – including processed and ground) is covered under Tariff Heading 2508. However, as per Note 1 of Chapter 25, the headings of this Chapter do not cover products that have been obtained by mixing. As the product 'Back Fill Compound' is obtained by mixing Bentonite Powder, Wood Charcoal Powder and Graphite Powder, the same would not fall under Tariff Heading 2508 in view of the said Note 1 of Chapter 25. Tariff Heading 2805 covers 'Alkali or alkaline-earth metals; rare-earth metals, scandium and yttrium, whether or not intermixed or interalloyed; mercury'. The applicant has not submitted anything indicating how the product 'Back Fill Compound' can be termed as 'Alkali or alkaline earth-metals or rare-earth metals etc. or mercury, to be covered under Tariff Heading 2805. Therefore, the said product would not fall under Tariff Heading 2805.*

*The applicant also provides service of installation of Earthing System. 'Electrical installation services including Electrical wiring & fitting services, fire alarm installation services, burglar alarm system installation services' fall under Service Accounting Code 995461. Accordingly, the Service Accounting Code 995461 covers the service of installation of 'Earthing System' provided by the applicant.*

*Following goods and services supplied by M/s. Docsun Power Pvt. Ltd. (GSTIN No. 24AAECD6282C1ZX) are classifiable as under –*

- (i) The product 'Lightning Arrester' is classifiable under Tariff Heading 8535.*
- (ii) The product 'Earthing Pipe' is classifiable under Tariff Heading 8538.*
- (iii) The product 'Solid Rod Earthing' is classifiable under Tariff Heading 7215.*
- (iv) The product 'Back Fill Compound' is classifiable under Tariff Heading 3824.*
- (v) The service of installation of Earthing System is classifiable under Service Accounting Code 9954.*

- 6. Authority for Advance Rulings, Gujarat, Rashmi Hospitality Services (P) Ltd.** *In Re, March 21, 2018- The Applicant M/s. Rashmi Hospitality Services Private Limited has submitted that the applicant is having business of caterers and supply food, beverages and other eatables (non-alcoholic drinks) complete services at various places of their customers who have in house canteens at their factories. The applicant submitted that applicant normally charges GST @ 18% classifying their services under heading 9963 as outdoor catering.*

*The expression 'outdoor catering' has not been defined under the CGST Act, 2017/GGST Act, 2017 or the notifications issued there under. Nevertheless, the observations made in the aforesaid judgement of the Hon'ble High Court are relevant for deciding the present issue. In the said judgement, the Hon'ble High Court has observed that the taxable catering service cannot be confused with who has actually consumed the food, edibles and beverages which are supplied-by the-assessee: It*

*is also held that the-taxability or the charge of tax does not depend on whether and to what extent the person engaging the service consumes the edibles and beverages supplied, wholly or in part.*

*In the present case also, the service of catering is provided by the applicant to the recipient and the fact that the meal, snacks, tea etc. are consumed by the workers/employees of the recipient would not alter the nature of service provided by the applicant.*

*The supply of services by M/s. Rashmi Hospitality Services Private Limited (GSTIN 24AACCR5234Q1Z2) is covered under Sr. 7(v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the Central Goods and Services Tax Act, 2017 and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the Gujarat Goods and Services Tax Act, 2017, attracting Goods and Service Tax @ 18% (CGST 9% + SGST 9%).*

7. **West Bengal Authority for Advance Ruling, Goods and Services Tax, Switching Avo Electro Power Ltd., 21st March, 2018-** *The Applicant, stated to be a supplier of power solutions, including UPS, servo stabiliser, batteries etc. wants a ruling on the classification of the supply when it supplies UPS along with the battery. More specifically, he wants a ruling on whether such supplies can be treated as Composite Supply within the meaning of Section 2(30) of the CGST/WBGST Act, 2017 (hereinafter referred to as “the GST Act”). An Advance Ruling is admissible on this issue under Section 97 (1) of the GST Act.*

*The question, however, is what should be the tariff head when the UPS and the battery are supplied as separate goods, but a single price is charged for the combination of the goods supplied as a single contract. The UPS and the battery, being supplied as separate goods, no longer form an integral part of a composite machine, but it remains to be discussed whether or not under these circumstances they may be considered as “naturally bundled”. The applicant insists that as the battery, being supplied as part of an integral contract, remains naturally bundled with UPS - the principal supply. The argument is fallacious. Goods are naturally bundled Page 4 of 4 in a supply contract if the contract is indivisible. For example, a works*



*contract within the meaning of section 2(119) of the GST Act is a composite supply. Steel, cement and other goods and services supplied are inseparable in a contract for civil construction. The recipient has not contracted for the supply of steel, cement or architectural service, but for the service of constructing the civil structure, where all these supplies are inseparable and, therefore, naturally bundled. The contract for the supply of a combination of UPS and battery, if not built as a composite machine, is not indivisible. The recipient can split it up into separate supply contracts if he chooses. The goods supplied in terms of such contracts are, therefore, no longer naturally bundled and cannot be treated as a composite supply.*

*If a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies. Mixed supply is defined under section 2(74) of the GST Act as one where “two or more individual supplies of goods/services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply”. The stated Illustration to Section 2(74) of the GST Act refers to a package of items which can be supplied separately and are not dependent on each other, but for the instant purpose are being packaged together. 13. Based on information furnished by the Applicant and the Purchase Order supplied by them as Sample of the Billing done by them it is seen that though UPS and Battery are two different and independent items, they are billed together and a single price is quoted for the sale. In view of the foregoing we rule as under:*

*The supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price. This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.*

8. **Authority for Advance Ruling, Kerala, Shri N.C. Varghese, Thrissur, 26th March, 2018-** *The applicant has submitted that he had participated in the e-auction for cutting 6696 standing rubber trees from the State Farming Corporation Ltd., Vettithitta, a PSU under Central Govt. The applicant contends that the tax*



*liability of timber and firewood/fuel wood is explained under HSN code 4401 and there is no direction to collect GST for standing trees of rubber trees which fall under HSN code 06. But, the State Farming Corporation is demanding 18% on live rubber trees. The tax liability of GST coming to effect only when the standing trees are cut down and separated into timber/wood and fuel wood/fire wood as the case may be.*

*As per the terms and conditions in the e-tender of State Farming Corporation, the contractor should cut' and remove the trees from the estate. Further, no other .trees or fuel wood in the estate are allowed to be cut down or removed. As per the definition of goods in Section 2(52) of CGST Act, 2017, "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. In this case, under the contract of supply, growing crops - i.e., rubber trees are agreed to be severed before supply and hence, comes under the definition of 'goods'. Thus, standing rubber trees no longer remain as such. Therefore, it can only be treated as 'wood in rough form'.*

*In GST, firewood is exempted as per HSN Code 4401. There is no differentiation between soft wood and hard wood in GST. In the light of the aforesaid circumstances, we rule as under.*

*It is hereby clarified that rate of tax on rubber wood in the aforesaid transaction is 18% under the HSN4403.*

9. ***Authority for Advance Rulings, Andhra Pradesh, S.S.S.V.K. Cold Storage (P.) Ltd., In Re., March 28, 2018-*** M/s SSSVK COLD STORAGE PRIVATE LIMITED, [hereinafter also referred as an applicant), having GSTIN: 37AAMCS5026K1ZY are engaged in cold storage operations. The applicant extends his services by storing various processed and unprocessed agricultural produce pertains to both the farmers and traders.

*The gist of questions on which advance ruling sought by the applicant is as follows:*

- (a) *The applicant used to provide space to the farmers as well as traders for storage of agriculture produce such as*

*Mirchi (Chillies), whole Pulses, Apples, Potato, Raw cashew nuts Oil seeds, maize ( Corn from maize ), Tamarind, Millets, Cattle feed etc., in his cold storage. In this case the applicant requires advance ruling on*

- *“Whether the storage of Agriculture produce falls under Service Account Code (SAC) 998619 or 996721 or some other SAC*
  - *and rate of tax applicable for such storage of such produces if any,*
- (b) *Whether the services falls under SAC 998619 the exemption under notification no 12/2017 C7R dated 28.06.2017 under entry no 54(e) is applicable to both farmers and traders.*
- (c) *If benefit of Notification No 12/2017-CTR dated 28.06.2017 under Entry No 54(e) is applicable exclusively for farmers, then what are documents required to be taken by cold storage operator for availing exemption benefit*

*The storage and warehousing of Agriculture produce falls under Service Account Code (SAC) 9986 and not under 9967.*

*The exemption under notification no 12/2017 Central Tax (Rate) dated 28.06.2017 under entry no 54(e) is applicable for agricultural produce of both farmers and traders.*

10. **Authority for Advance Rulings, New Delhi Bench, Shalesh Kumar Singh, In Re., April 6, 2018-** *The applicant is interested in trading of ‘Dried Tobacco Leaves’ which would be purchased from registered dealer who in return purchases such Tobacco Leaves from Agriculturist/Farmers. Such registered dealer after purchasing it from Agriculturist/Farmers will sell the same to Applicant as it is without any further change in its form.*

*Product to be traded by the applicant is ‘Dried Tobacco Leaves’ as such and no processing/modification shall be done by the applicant so the same shall be classifiable under ‘Tobacco Leaves’ and GST @ 5% shall be levied on such ‘Dried Tobacco Leaves’ as per the interpretation of Law and common parlance by the applicant under Chapter No. 24 Tariff Item 2401.*

*It is held that the ‘Dried Tobacco Leaves’ which have undergone the process of curing after harvesting of tobacco leaves*

are ‘unmanufactured tobacco’ covered in HSN Code 2401. However, they are not covered under S. No. 109 of Schedule-1 of Notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 @ 2.5% (CGST) + 2.5% (SGST) or 5% (IGST), but the same are covered under S. No. 13 of Schedule- IV of the said Notification as ‘unmanufactured Tobacco (Other than Tobacco Leaves)’ @ 14% (CGST) + 14% (SGST) or 28% (IGST).

11. **West Bengal Authority for Advance Ruling, Goods and Services Tax, Sika India Pvt. Ltd., April 09, 2018-** The Applicant states that the proper HSN of its manufactured product “SIKA Block Joining Mortar” is 3824 50 90. The Applicant himself, however, has classified the product under HSN 3214 90 10 while filing returns under the Excise Act. Advance Ruling is sought on this issue under section 97 (2) (a) & (e) of the CGST/WBGST Act, 2017 (hereinafter referred to as “GST Act”).

The contesting heading 3824 covers PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED. Clearly, a chemical preparation can be classified under such residuary heading only if it is not elsewhere specified. As the Applicant’s product, namely ‘Sika Block Joining Mortar’ is already specified under tariff item 3214 90 90, heading 3824 does not come into the picture.

In view of the foregoing, we rule as under

“SIKA Block Joining Mortar” is to be classified under tariff item 3214 90 90 of the Customs Tariff Act, 1975, and, therefore, taxable under serial no. 24 of Schedule IV vide Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 under CGST Act, 2017 and 1125-FT dated 28/06/2017 under WBGST Act, 2017.

This ruling is valid subject to the provisions under section 103 (2) until and unless declared void under section 104 (1) of the GST Act.

12. **West Bengal Authority for Advance Ruling, Goods and Services Tax, Akansha Hair & Skin Care Herbal Unit Pvt. Ltd., April 09, 2018-** The Applicant manufactures skin

*care preparations and wants an Advance Ruling on the Classification of 33 of its products. The Applicant declares that the question raised in this Application is not pending or decided in any proceedings under the CGST/WBGST Act, 2017 (hereinafter the GST Act). The officer concerned has not objected to the admission of the application. As such, the question raised is admissible for Advance Ruling under section 97 (2) (a) of the GST Act. The Application is, therefore, admitted.*

*The Applicant argues that its skin care preparations are Ayurvedic Medicaments. They are meant for therapeutic or prophylactic uses, put up in packaging for retail sale and entirely correspond to the description of goods under HSN 3004 [serial no. 63 of Notification No. 1/2017-CT(Rate) dated 28/06/2017], and, therefore, taxable under Schedule II.*

*Preparations for the care of the skin namely, Rupam (Pimple Pack) and Pailab (Anti-Crack Cream), in the list submitted by the Applicant of the Application are classifiable as Medicament under heading 3004 of the Customs Tariff Act, 1975. Preparations listed as Swarnajyoti, Sunayana and Tarumitra-60 have not yet come into existence, and, therefore, no rulings are pronounced on their classification. The remaining products mentioned in the list submitted by them are not offered primarily as medicaments and, therefore, not to be included under heading 3004.*

*This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.*

13. **Authority for Advance Rulings, Kerala, Veena Chemicals, In Re, May 29, 2018-** *Shri. Gopal Gireesh, Veena Chemicals, Thiruvananthapuram a retail dealer of implants for joint replacements (hereinafter called the applicant) is a registered person having GSTIN 32ADXPG4961E1ZF. The applicant has preferred an application for Advance Ruling on the rate of tax in respect of the commodities listed in the Annexure to the Application.*

*The applicant has stated in the application that all the commodities listed in the Annexure are implants for*

*handicapped patients in the nature of Joint Replacements falling under HSN Code 90213100 and are included under Schedule I. The applicant further stated that the items mentioned in the Annexure are included under Schedule I; Serial No.257 – List 3E (9) – Implants for handicapped patients, joint replacements etc and the rate of GST is 5%. As per Order No. C7 4264/06/CT dated 14.12.2007 of the erstwhile KVAT Act, these items i.e.; Total Knee Implants and Total Hip Implants were falling under First Schedule of the KVAT Act and hence, were exempt from tax.*

*The implants for joint replacements falling under HSN Code 90213100 are covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.*

14. ***Authority for Advance Rulings, Telangana, Macro Media Digital Imaging (P.) Ltd. In Re, May 30, 2018-*** *M/s. Macro Media Digital Imaging Private Limited, Charlapally, Hyderabad (GSTIN No.36AABCM9451F1ZF) has filed an application in Form GST ARA-01 under Section 97(1) of TCGST Act, 2017 read with Rule 103 of CGST/TCGST Rules, 2017 and sought Advance Ruling on the following issues:-*

- (i) Whether the printed advertisement materials classifiable as ‘supply of goods?’*
- (ii) If yes, whether it is classifiable under chapter heading 4911 of first schedule to Customs Tariff Act, 1975?*

*Further, printed advertisement material are classifiable under Tariff heading 4911 in accordance with the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule as made applicable for the interpretation and classification of goods under GST Tariff.*

*The issue has been examined with reference to the provisions of the CGST/TCGST Act, 2017 and the Rules made there under and the notifications issued till date; and the Advance Ruling is given as under:-*

- (i) The printed advertisement materials manufactured and supplied by the applicant are classifiable as ‘supply of goods’.*

(ii) *The printed advertisement material are classifiable under chapter heading 4911 of the GST Tariff and the rate of tax applicable is 6% CGST + 6% SGST as given in the Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017, (G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017)*

Sl. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods	Rate
132 Sch-II of notification 1/2017 - Central Tax (Rate)	4911	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	CGST 6% + TGST 6%

*The application filed by M/s Macro Media Digital Imaging Private Limited, Charlapally, Hyderabad, is disposed accordingly.*

15. **Telangana State Authority for Advance Ruling, M/s Nagarjuna Agro Chemicals Pvt. Ltd., Hyderabad dated May 30, 2018-** *M/s Nagarjuna Agro Chemicals Private Limited, Hyderabad sought advance ruling on Rate of Tax on Agricultural Soil testing Minilab and its Reagent Refills.*

*On examination of the product brochure submitted by the applicant and the functions performed by the minilab in the*

*process of soil testing, reveals that the “Soil testing minilab” is basically an instrument/apparatus for physical or chemical analysis of the soil and for determining various parameters viz., soil pH, EC, Organic Carbon, available nitrogen, phosphorous, potassium, Sulphur and micronutrients like Zinc, boron and iron.*

*The Instruments and Apparatus for physical or chemical analysis are classifiable under GST Tariff heading 9027. As per the explanatory notes to HSN for chapter sub- heading 90.27, “Wet- chemical analyzers” for determination of inorganic or organic components of liquids, e.g., traces of metals, phosphates, nitrates, chlorides or integral parameters such as “chemical organic demand” and “Total organic carbons” are classifiable under Tariff heading 9027. Similarly pH meters used to measure the factor expressing the acidity or alkalinity of a solution or mixture are classifiable under Tariff heading 9027.*

*Hence by applying the General rules for interpretation of Customs Tariff as applicable to GST Tariff, as the functions being performed by “Soil testing minilab” are similar to that of an Instrument/Apparatus for physical or chemical analysis, the “Soil testing minilab” is correctly classifiable under heading 9027 of the GST Tariff.*

## **CLARIFICATIONS MADE BY CBEC ON TARIFF ENTRIES BY WAY OF FAQs**

### **FAQs dated 27/07/2017**

S. No.	Question	Answer	
1.	What is the HS code for Mahua Flower and its GST rate?	1.	Mohua flowers fall under heading 1212 and attract 5% GST.
2.	What is the HS code for Sal Leaves which is used for making plates and its GST rate?	1.	Sal leaves are classifiable under heading 0604 and attract Nil GST

S. No.	Question	Answer	
3.	What is the HS code for Sabai Grass (a kind of grass used for making of rope, baskets, etc.) and its GST rate?	1.	Sabai grass is used as plaiting material and is classifiable under heading 1401 and attracts 5% GST.
4.	What is the GST rate on Hand Made Branded Biri?	1. 2.	All biris attract 28% GST. In addition, handmade biris attract NCCD of ₹ 1 per thousand. Machine made biris attract NCCD of ₹ 2 per thousand.
5.	What is the GST rate on sugarcane procured by the sugar mills which is generally fresh and procured directly from the farm?	1.	Fresh or chilled sugar cane, falling under heading 1212, attracts Nil GST.
6.	Will 5% GST on raw cotton be paid directly by factories on reverse charge basis and who will pay it?	1.	Where the supply of raw cotton is by an agriculturist [as defined under section 2(7) of the Central Goods and Services Tax Act, 2017] to a registered person, GST will have to be paid by such registered person on reverse charge basis.
7.	What is the GST rate on Electric accumulators?	1.	Electric accumulators, including separators therefor, whether or not rectangular (including square) fall under heading 8507 and attract 28% GST.
8.	Can sterilization pouches be treated as aseptic packaging paper? What is the GST rate on sterilization pouches?	1. 2.	Sterilisation pouches are different than aseptic packaging paper. Sterilisation pouches fall under 3005 and attract 12% GST.
9.	What is the GST rate on Jute yarn and jute twine? What is GST rate on jute bags and jute cloth?	1.	As per the HSN Explanatory Notes, goods of jute fibres measuring 20,000 decitex or less are classifiable under heading 5307 as yarn and attract 5% GST.



S. No.	Question	Answer	
		2.	Goods of jute fibres measuring more than 20,000 decitex are classifiable under heading 5607 as twine and attract 12% GST.
		3.	Sacks and bags, of a kind used for the packing of goods are classifiable under heading 6305 and attract 5%/12% GST, depending on their sale value not exceeding or exceeding ₹ 1000 per piece.
		4.	Woven fabrics of jute are classifiable under heading 5310 and attract 5% GST, with no refund of unutilized ITC.
10.	What is the GST rate on used Rail Wagons?	1.	Railway wagons are classifiable under heading 8606 and attract 5% GST, with no refund of unutilised ITC.
		2.	Therefore, used railway wagons also attract 5% GST.
11.	What is the GST rate and HSN code of Raw and processed wood of Malaysia saal and marandi wood?	1.	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, is classifiable under heading 4403 and attracts 18% GST.
12.	What is the GST rate on 'Khakhara'(traditional food)?	1.	Khakhra falls under "Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form" which is classifiable under 2106 90 and attracts 12% GST
13.	Is NCCD leviable on tobacco products from 1st July, 2017? What will be the method of valuation for levy of NCCD?	1.	NCCD shall continue to be levied on tobacco and tobacco products at the rates as applicable prior 1st July, 2017.
		2.	Since NCCD is a duty of excise, the valuation for the purposes of charging NCCD shall be as per the Central Excise Law read with the Valuation Rules under Central Excise Law.

S. No.	Question	Answer	
14.	What is the GST rate and HSN code of roasted grams?	1.	Roasted grams fall under 2106 90 and attract 12% GST.
15.	What is the HS code and GST rate for Chilli soaked in butter milk with salt (mor milagai in tamil)?	1.	<p>Vegetables</p> <p>example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate under heading 0711 and attract 5% GST.</p> <p>Thus, chilli soaked in butter milk with salt provisionally preserved (for (mor milagai in tamil) falls under 0711 and attracts 5% GST.</p>
16.	What is GST rate for bangles?	1.	<p>Plastic bangles falling under heading 3926 consumption are classifiable are exempt from GST.</p>
		2.	<p>Glass bangles (except those with precious metals) falling under heading 7018 are exempt from GST.</p>
		3.	<p>Bangles of base metal, whether or not plated with precious metals, falls under tariff item 7117 19 10 and attract 3% GST.</p>
17.	What is the classification and GST rate for manmade fishnet twine?	1.	<p>As per the HSN Explanatory Notes, goods of man-made fibres (including those yarns of two or more monofilaments of Chapter 54) measuring 10,000 decitex or less are classifiable under Chapter 54 or 55 as yarn and attract 18% GST.</p>
		2.	<p>Goods of manmade fibres (including those yarns of two or more monofilaments of chapter 54) measuring more than 10,000 decitex are classifiable under heading 5607 as twine and attract 12% GST</p>

<i>S. No.</i>	<i>Question</i>	<i>Answer</i>	
18.	What is the HSN code and rates for Soft drinks i.e. aerated drinks?	1.	All goods [including aerated waters], containing added sugar or other sweetening matter or flavoured falling under 2202 10 attract 28% GST and 12% Compensation Cess.
19.	What is the HSN code and rates for Mutton leg?	1.	Meat of sheep or goats (including mutton leg), fresh, chilled or frozen [other than frozen and put up in unit container] falling under heading 0204 is exempt from GST.
		2.	However, meat of sheep or goats (including mutton leg), frozen and put up in unit container, falling under heading 0204 attracts 12% GST
20.	What is the HSN code and rates for Coffee?	1.	Instant Coffee falls under heading 2101 and attracts 28% GST.
21.	What is the HSN code and rates for Sausages?	1.	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products fall under heading 1601 and attract 12% GST.

### FAQs dated 03/08/2017

<i>S. No.</i>	<i>Question</i>	<i>Answer</i>	
1.	What is the HSN code and GST rate for lac or shellac bangles?	1.	Lac or shellac bangles are classifiable under heading 7117 and attract 3% GST.
2.	What is the HSN code and GST rate for kulfi?	1.	Kulfi is classifiable under heading 2105 and attracts 18% GST.
3.	What is the HS code for Solar Panel Mounting Structure and its GST rate?	1.	Structures of iron or steel fall under heading 7308 and structures of aluminium fall under heading 7610 and attract 18% GST.

S. No.	Question	Answer																						
		2.	Solar Panel Mounting Structure, depending on the metal they are made of, will fall under 7308 or 7610 and attract 18% GST.																					
4.	What is the HS code for Idli Dosa Batter (Wet Flour) and its GST rate?	1.	Idli Dosa Batter (Wet Flour) [as food mixes] falls under heading 2106 and attracts 18% GST.																					
5.	What is the HS code for Maize Seeds and its GST rate?	1.	Maize [of seed quality] fall under heading 1005 and attract Nil GST.																					
6.	What is the HS code for Saree and dhoti and its GST rate?	1.	<p>Sarees and dhoti are classifiable under different headings depending on their constituent and attract GST rate as under:</p> <table border="1" data-bbox="607 659 1004 1089"> <thead> <tr> <th data-bbox="607 659 729 724">Constituent fibre</th> <th data-bbox="729 659 846 724">Description</th> <th data-bbox="846 659 921 724">HS code</th> <th data-bbox="921 659 1004 724">GST Rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="607 724 729 813">Silk</td> <td data-bbox="729 724 846 813">Woven fabrics of silk - sarees</td> <td data-bbox="846 724 921 813">5007</td> <td data-bbox="921 724 1004 813">5%</td> </tr> <tr> <td data-bbox="607 813 729 902" rowspan="2">Cotton</td> <td data-bbox="729 813 846 902">Of not than 200 gsm more</td> <td data-bbox="846 813 921 902">5208</td> <td data-bbox="921 813 1004 902">5%</td> </tr> <tr> <td data-bbox="729 902 846 992">Of more than 200 gsm</td> <td data-bbox="846 902 921 992">5209</td> <td data-bbox="921 902 1004 992">5%</td> </tr> <tr> <td data-bbox="607 992 729 1089">Manmade filaments yarn</td> <td data-bbox="729 992 846 1089">Of any gsm</td> <td data-bbox="846 992 921 1089">5407 or 5408</td> <td data-bbox="921 992 1004 1089">5%</td> </tr> </tbody> </table>			Constituent fibre	Description	HS code	GST Rate	Silk	Woven fabrics of silk - sarees	5007	5%	Cotton	Of not than 200 gsm more	5208	5%	Of more than 200 gsm	5209	5%	Manmade filaments yarn	Of any gsm	5407 or 5408	5%
Constituent fibre	Description	HS code	GST Rate																					
Silk	Woven fabrics of silk - sarees	5007	5%																					
Cotton	Of not than 200 gsm more	5208	5%																					
	Of more than 200 gsm	5209	5%																					
Manmade filaments yarn	Of any gsm	5407 or 5408	5%																					
7.	What is the HS code and GST rate for Filters or Water Purifiers?	1.	Filters or Water Purifiers fall under heading 8421 and attract 18% GST.																					
8.	What is the HS code for Organic Surface Active Agents and its GST rate?	1. 2.	<p>Organic surface-active products or preparations or agents fall under heading 3401 or 3402.</p> <p>Soaps; organic surface active products and preparations for use and soaps, in form of bars, cakes, moulded pieces or shapes falling under heading 3401 [except 3401 30] attract 18% GST.</p>																					

S. No.	Question	Answer	
		3.	Other organic surface active products and preparations falling under sub-heading 3401 30 and organic surface active agents and preparations falling under heading 3402 attract 28% GST.
9.	What is the GST rate on Rakhi ?	1. 2. 3.	1. Puja samagri, including kalava (raksha sutra) attracts Nil GST. 2. Rakhi, which is in form of kalava [raksha sutra] will thus attract Nil GST. 3. Any other rakhi would be classified as per its constituent materials and attract GST accordingly.
10.	What is the GST rate on Nail Polish?	1.	Nail Polish [whether in large quantities say 50 to 100 litres or in retail packs] falls under heading 3304 and attracts 28% of GST.
11.	What is the GST rate and HSN code of Wet Dates?	1.	Wet dates fall under heading 0804 and attract 12% GST.
12.	What is the HS code and GST rate for Pet Food?	1.	Dog or cat foods fall under heading 2309 and attracts 18% GST under the residual entry S. No. 453.
13.	What is the classification and GST rate for sale of Export Incentives Licences like MEIS, SEIS and IEIS?	1.	MEIS etc. fall under heading 4907 and attract 12% GST.
14.	What is the HSN Code and GST rate for a Fabric 1.2 MT cut for pant and 2.5 MT cut for a shirt?	1.	Specified fabrics attract 5% GST, whether or not in form of cut pieces.
15.	What is the classification of Hand Decorative Figurines and Hand Decorative Artefacts made of marble powder, stone and unsaturated resin?	1.	Articles of marble [including those made of marble powder, stone and unsaturated resin] fall under heading 6802 and attract 28% GST.
16.	What will be the GST rate for Arecanut/ Betel nut?	1.	Fresh areca nut/betel nuts fall under heading 0802 and attract Nil GST.

S. No.	Question	Answer	
		2.	Dried areca nut/betel nuts fall under heading 0802 and attract 5% GST.
17.	What is the HSN code and GST rates for Cotton Seed oil cake?	1.	Cotton seed oil cakes for use as aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed attract Nil GST.
		2.	Cotton seed oil cakes for other uses attract 5% GST.
18.	What is the GST rate for Portable and Mobile Toilets?	1.	Prefabricated buildings, including portable and mobile toilets, fall under heading 9406 and attract 18% GST.
19.	What is the GST Compensation Cess rate on imported Coal?	1.	Imported coal will attract GST compensation cess @ ₹ 400 per tonne.
20.	What is the HSN code and GST rates for Battery for mobile handsets?	1.	Battery for mobile handsets falls under heading 8506 and attracts 28% GST.
21.	What is the HS code and GST rate for tamarind?	1.	Tamarind [fresh] falls under 0810 and attract Nil GST.
		2.	Tamarind [dry] falls under 0813 and attract 12% GST.
22.	What is the HS code and GST rate for tamarind kernel?	1.	Tamarind kernel falls under heading 1207 and attracts Nil GST.
23.	What is the HS code and GST rate for tamarind kernel powder?	1.	Tamarind kernel powder falls under heading 1302, and attracts 18% GST.
24.	What is the GST rate on Hair Rubber Bands?	1.	Hair rubber bands fall under heading 4016 and attract 28% GST.
25.	What is HS code and GST rate for Khari and hard Butters?	1.	Khari and hard butters fall under heading 1905 and attract 18% GST.
26.	What is the GST rate and HSN code of Khoya/Mawa?	1.	Khoya/mawa being concentrated milk falls under 0402 and attracts 5% GST.

S. No.	Question	Answer	
27.	What will be the GST rate for printed paperboard mono carton/Dabbi of a pharmaceutical company and what will be the GST rate for a non-corrugated carton and corrugated carton?	1.	Cartons, boxes and cases of corrugated paper or paper board, fall under heading 4819 and attract 12% GST.
		2.	Folding cartons, boxes and cases, of non-corrugated paper and paperboard, falling under heading 4819 attract 18% GST under the residual entry S. No. 453.
28.	Tobacco leaves falling under heading 2401 attracts 5% GST on reverse charge basis in respect of supply by an agriculturist. What is the meaning of tobacco leaves?	1.	For GST rate of 5%, tobacco leaves means leaves of tobacco as such or broken tobacco leaves or tobacco leaves stems.
29.	What is the HS code and the GST rate for Isabgol seeds?	1.	Isabgol seeds fall under heading 1211.
		2.	Fresh isabgol seeds attract Nil GST.
		3.	Dried or frozen Isabgol seeds attract 5% GST.
30.	What is the HS code and the GST rate for Isabgol husk?	1.	Isabgol husk falls under 1211 and attracts 5% GST.
31.	What is HS code and GST rate of copra and dried coconut?	1.	Coconuts, fresh or dried, whether or not shelled or peeled fall under heading 0801 and attract Nil GST. As per the HSN Explanatory Notes, the heading excludes copra, the dried flesh of coconut used for the expression of coconut oil (1203).
		2.	Copra falls under heading 1203 and attracts 5% GST.
32.	Footwear having a retail sale price not exceeding ₹ 500 per pair [provided that such retail sale price is indelibly marked or embossed on the footwear itself] attracts 5%	1.	As per the Legal Metrology (Packaged Commodities) Rules, 2011, retail sale price [RSP] means the maximum price at which the commodity in packaged form may be sold to the consumer and is inclusive of all taxes.

<i>S. No.</i>	<i>Question</i>	<i>Answer</i>	
	GST. Does the retail sale price referred to above include the GST?	2.	Thus, retail sale price declared on the package is inclusive of GST.
		3.	GST for footwear will be 5% if the RSP does not exceed ₹ 500 per pair. The GST rate will be 18% if the RSP exceeds ₹ 500 per pair.
		4.	GST, however, will be payable on the transaction value.
33.	Readymade garments of sale value not exceeding ₹ 1000 per piece attract 5% GST. Readymade garments of sale value exceeding ₹ 1000 per piece attract 12% GST. How does a supplier determine what rate to charge on readymade garments?	1.	The sale value referred to in the said entries refers to the transaction value and not the retail sale price of such readymade garments.
		2.	That is, if a wholesaler supplies readymade garments for a transaction value of ₹ 950 per piece to a retailer, the GST chargeable on such readymade garments will be 5%.
		3.	However, if the retailer sells such readymade garments for ₹ 1100 per piece, the GST chargeable on such readymade garment will be 12%.
34.	What is the GST rate on chocolate 'sandesh' Bengali misti?	1.	Sandesh, whether or not containing chocolate, attract 5% GST.

### FAQs dated 29/09/2017

<i>S. No.</i>	<i>Question</i>	<i>Answer</i>	
1.	What is the GST rate for rice bran?	1.	Rice bran falls under HS code 2302.
		2.	Rice bran for use as aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed attracts Nil GST.
		3.	Rice bran for other uses attracts 5% GST.



S. No.	Question	Answer	
2.	What is the GST rate on “De-oiled rice bran” produced during extraction of vegetable oil from ‘Rice Bran’?	1.	HS code 2306 includes de-oiled rice bran obtained as a residue after the extraction of oil from rice bran.
		2.	De-oiled rice bran attracts 5% GST irrespective of use.
3.	What is the GST rate on seeds of wheat, paddy for sowing purpose	1.	The GST rate on seeds of wheat, paddy for sowing purpose is Nil.
4.	What is HS code and GST rate of Sangari?	1.	Sangari is dried vegetable and fall under HS code 0712. It attracts Nil GST.
5.	What is HS code and GST rate of Methi Patha (dry) and Dhaniya Patha (dry)?	1.	Methi Patha (dry) i.e. dry fenugreek leaves and Dhaniya Patha (dry) i.e. dry coriander leaves are spices falling under HS code 0910 and attract 5% GST.
6.	What is the HS Code and GST rate on Turmeric?	1.	Fresh turmeric, other than in processed form, falls under 0910 and attracts Nil GST.
		2.	Turmeric dried or ground attracts 5% GST.
7.	What is the HS code and GST rate for tamarind kernel?	1.	In FAQs published on 03.08.2017 in leading dailies, it was clarified that tamarind kernel falls under HS code 1207 and attracts Nil GST.
		2.	It is, however, clarified that:
		a.	tamarind kernel of seed quality attracts Nil GST, whereas
		b.	tamarind kernel of other than seed quality attracts 5% GST.
8.	What is the GST rate on sugar cane seeds and sugar cane as such?	1.	Sugar cane, fresh or chilled including that for sowing, falls under HS code 1212, and attract Nil rate of GST.

S. No.	Question	Answer
9.	What is the HS Code and GST rate on Paddy Husk and is it different from Rice bran?	<p>1. Cereal straw and husks, including rice husks or rice hulls, unprepared, whether or not chopped, ground, pressed or in the form of pellets fall under HS code 1213 and attract Nil GST.</p> <p>2. Rice bran falls under HS code 2302 and attracts Nil GST if supplied as <b>aquatic feed including shrimp feed and prawn feed, poultry feed &amp; cattle feed</b> or 5% if supplied for other purposes.</p>
10.	What is the HS Code and GST rate on Peanut Chikki, Rajgira Chikki, Sesame Chikki, and shakkarpara?	<p>1. As per HS explanatory notes, HS code 1704 covers most of the sugar preparations which are marketed in a solid or semi-solid form, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionery or candies.</p> <p>2. Therefore, Peanut Chikki, Rajgira Chikki, Sesame Chikki and shakkarpara will fall under HS code 1704 and attract 18% GST.</p>
11.	What is the HS Code and GST rate on Nutritious diet (Pushtaahar) being distributed under the Integrated Child Development Scheme?	<p>1. Since the Pushtaahar distributed under the Integrated Child Development Scheme, is a mixture of proteins, various grains, wheat flour, sugar etc., it is covered under HS Code 2106 and not 1901, and attracts 18% GST.</p>
12.	What is the HS Code and GST rate on sharbat?	<p>1. Sharbat falls under HS code 2106 and attracts 18% GST.</p>
13.	What is the HS Code and GST rate on chena products, halwa, barfi (i.e. khoa product), laddu?	<p>1. Products like halwa, barfi (i.e. khoa product), laddus falling under HS code 2106, are sweetmeats and attract 5% GST.</p>

S. No.	Question	Answer	
14.	What is the GST rate on Lobhan?	1.	Lobhan is classified under HS code 3307 41 00 and attract 5% GST.
15.	What is HS code and GST rate for resin coated sand?	1.	HS code 3824 covers prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products).
		2.	Thus, resin coated sand falls under HS code 3824 and attract 18% GST.
16.	What is the HS code of Jute and Khadi bags for use in schools or offices?	1.	Jute bags fall under HS Code 4202 22 30 and attract GST rate of 18%.
		2.	Khadi bags fall under HS code 4202 22 20 and attract GST rate of 18%.
17.	What is the GST tax rate on “stitched Sal Leaf plate” used as plate for eating?	1.	Articles of plaiting material including stitched Sal leaf plates fall under HS code 4602 and attract 12% GST.
18.	What is the GST tax rate on ropes/baskets made up of Sabai Grass?	1.	Articles of plaiting material, including baskets, fall under HS code 4602 and attract 12% GST.
19.	For cotton ginning business, will the 5% GST on raw cotton be paid directly by factories on reverse charge basis or it is paid to the agent and later claimed? (Agent being the mediator between unregistered farmer and the factories).	1.	If the sale of raw cotton is by an agriculturist to a registered person (say a manufacturer or dealer), then such registered person is liable to pay GST on reverse charge basis. in other cases, GST is to be paid by the supplier of raw cotton.
20.	What is the HS and GST rate on:  (a) embroidery or chikan work in strips, piece or motifs;	1.	The HS code of embroidery including chikan work in strips, piece or motifs is 5810 and attracts 12% GST.
		2.	Fabrics with embroidery or chikan work fall under Chapters 50 to 55 and attract 5% GST.

S. No.	Question	Answer	
	(b) fabrics with embroidery or chikan work;  (c) garments or made up articles of textiles with embroidery or chikan work?	3.	Garments or made up articles of textiles with embroidery or chikan work fall under Chapters 61 to 63. Such articles with sale value not exceeding ₹ 1000 per piece attract 5% GST and with sale value exceeding ₹ 1000 per piece attract 12% GST.
21.	What will be the GST rate on embroidered sarees, sarees with chikan work, banarasi sarees and other sarees?	1.	The GST rate on all sarees of silk, cotton or man-made fabrics [whether or not with embroidery or chikan work] is 5%.
		2.	However, GST rate on sarees woven of metal thread or metallised yarn under HS code 5809 is 12%.
22.	What is the GST rate on Agriculture Hoe?	1.	These are agricultural hand tools.
		2.	Agricultural hand tools fall under 8201 and attract Nil GST.
23.	What is the HS code of chaff cutter?	1.	The HS code of Chaff cutter is 8436 10 00 and it attracts a GST rate of 12%.
24.	What is the HS code and GST rate of parts of sewing machine?	1.	HS code for sewing machine is 8452 and it attracts 12% GST.
		2.	However, parts of sewing machine falling under HS code 8452 attract 18% under the residual entry S. No. 453 of Schedule III of the notification prescribing GST rates.
25.	What is the HS code and GST rate of parts of machines falling under HS code 8432, 8433, 8434 and 8436?	1.	Machines falling under HS codes 8432, 8433, 8434 and 8436 attract 12% GST.
		2.	However, parts of such machines falling under HS code 8432, 8433, 8434 and 8436 attract 18% under the residual entry S. No. 453 of Schedule III of the notification prescribing GST rates.

S. No.	Question	Answer	
26.	What is the HS code and GST rate for metal air cooler?	1.	Metal Air Coolers fall under HS code 8479 and attract 18% GST.
27.	What is the HS code for Office revolving chairs?	1.	Office revolving chairs falling under HS code 9403 attract 28% GST.
28.	What is the HS code and GST rate for Wipes for babies?	1.	As per the HSN explanatory notes paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale, falls under HS code 3401 and attracts 28% GST.
		2.	However, wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics fall under HS code 3307 and attract 28% GST.
29.	What will be classification of two wheelers chain and applicable GST rate	1.	<p>As per the HS explanatory notes, HS code 7315 includes:</p> <ul style="list-style-type: none"> <li>a) Transmission chains for cycles, automobiles or machinery.</li> <li>b) Anchor or mooring chains; lifting, haulage or towing chains; automobile skid chains.</li> <li>c) Mattress chains, chains for sink stoppers, lavatory cisterns, etc.</li> <li>d) All these chains may be fitted with terminal parts or accessories (e.g., hooks, spring hooks, swivels, shackles, sockets, rings and split rings and tee pieces).</li> <li>e) They may or may not be cut to length, or obviously intended for particular uses.</li> </ul> <p>Thus, two wheeler chains fall under HS Code 7315 and attracts 18% GST.</p>

S. No.	Question	Answer
30.	<p>Chain and parts thereof, of iron or steel falling under 7315 20, 7315 81, 7315, 82, 7315 89, 7315 90 [HS code 7315] attract 18% GST.</p> <p>What is GST rate on Chain and parts thereof, of iron or steel falling under 7315 11 00, 7315 20 and 7315 19 00?</p>	<p>1. Chain and parts thereof, of iron or steel falling under 7315 11 00, 7315 20 and 7315 19 00 attract 18% GST under the residual entry S.No. 453 of Schedule III of the notification prescribing GST rates.</p>
31.	<p>Whether, motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles will be exempted from Compensation cess irrespective of place of supply</p>	<p>1. HS code 8703 covers specialised vehicles, which includes ambulances. Motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles exempt from compensation cess, irrespective of place supply.</p> <p>2. For being eligible to exemption from compensation cess, only condition is that ambulance should be duly fitted with all the fitments, furniture and accessories necessary for an ambulance in the factory manufacturing such motor vehicles and not elsewhere.</p>
32.	<p>What is the GST rate for Walkie Talkie Sets/Radio Trunking Terminal?</p>	<p>1. Walkie Talkie Sets/Radio Trunking Terminals fall under HS code 8525 60 and attract 28% GST.</p> <p>2. However, two-way radio (Walkie talkie) falling under HS code 8525 60 used by defence, police and paramilitary forces attract 12% GST.</p>
33.	<p>What is the GST rate for goods falling under HS code 9021 40 to 9021 90?</p>	<p>1. All goods of HS code 9021 attract 12% GST.</p>

S. No.	Question	Answer	
		2.	However, assistive devices specified in List 3 appended to Schedule I of the notifications relating to CGST/IGST/SGST rates attract 5% GST.
		3.	Also, hearing aids falling under HS code 9021 attract Nil GST.
34.	What is the classification and GST rate for stick file of plastic, documents bag of plastic and certificate bag of plastic?	1.	These items fall under HS code 3926 and attract 28% GST.
35.	What is the classification and GST for printed menu cards single sheet, folded or laminated or Multi sheet hard bonded like a book with or without covers which used by hospitality industry?	1.	These items fall under HS code 4911 and attract 12% GST.
36.	What is the classification and GST rate for photo books printed using digital Offset printing press on printing paper [other than photo albums] and thereafter manually bound?	1.	These items fall under HS code 4911 and attract 12% GST.
37.	What is the classification and GST for posters with photographs/images etc. printed on it using Digital Offset Press/Digital printers on coated/uncoated paper?	1.	These items fall under HS code 4911 and attract 12% GST.
38.	What is the classification and GST for posters with photographs/images etc. printed on Digital Printers on coated cotton/mix canvas media or other synthetic media?	1.	These items fall under HS code 4911 and attract 12% GST.

<i>S. No.</i>	<i>Question</i>	<i>Answer</i>
39.	What is the classification and GST for photographs printed using digital offset press/digital printers on coated printing paper, sold in sheet or roll form.	1. These items are covered under HS code 4911 and attract 12% GST.

### FAQs on GST Services

<i>Sr. No.</i>	<i>Questions/Clarifications sought</i>	<i>Clarifications</i>
1.	<ol style="list-style-type: none"> <li>1. Will GST be charged on actual tariff or declared tariff for accommodation services?</li> <li>2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed.</li> <li>3. Where will the declared tariff be published?</li> <li>4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then?</li> <li>5. If tariff changes between booking and actual usage, which rate will be used?</li> <li>6. GST at what rate would be levied if an upgrade is provided to the customer at a lower rate?</li> </ol>	<ol style="list-style-type: none"> <li>1. Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value).</li> <li>2. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is ₹ 7000 per unit per day but the amount charged from the customer on account of extra bed is ₹ 8000, GST shall be charged at 18% on ₹ 8000.</li> <li>3. Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared</li> </ol>



Sr. No.	Questions/Clarifications sought	Clarifications
		<p>at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST.</p> <p>4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply.</p> <p>5. Declared tariff at the time of supply would apply.</p> <p>6. If declared tariff of the accommodation provided by way of upgrade is ₹ 10000, but amount charged is ₹ 7000, then GST would be levied @ 28% on ₹ 7000/-.</p>
2.	<p><i>Vide</i> notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 entry 34, GST on the service of admission into casino under Heading 9996 (Recreational, cultural and sporting services) has been levied @ 28%. Since the Value of supply rule has not specified the method of determining taxable amount in casino, Casino Operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.</p>	<p>Relevant part of entry 34 of the said CGST notification reads as under:</p> <p><i>“Heading 9996 (Recreational, cultural and sporting services) - ...</i></p> <p><i>(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, casinos, race-course, ballet, any sporting event such as Indian Premier League and the like. - 14%</i></p> <p><i>(iv) ...</i></p>

Sr. No.	Questions/Clarifications sought	Clarifications
		<p>(v) <i>Gambling. - 14 %</i></p> <p>As is evident from the notification, “entry to casinos” and “gambling” are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.</p>
3.	<p>The provision in rate schedule notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 does not clearly state the tax base to levy GST on horse racing. This may be clarified.</p>	<p>GST would be leviable on the entire bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be.</p> <p>Illustration: If entire bet value is ₹ 100, GST leviable will be ₹ 28/-.</p>
4.	<p>1. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels, inns, etc.], of notification 11/2017-CT (Rate) dated 28th June 2017, price/declared tariff includes the tax component or not?</p>	<p>1. Price/declared tariff does not include taxes.</p> <p>2. Room rent in hospitals is exempt.</p> <p>3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10 (1) (b) of CGST</p>

<i>Sr. No.</i>	<i>Questions/Clarifications sought</i>	<i>Clarifications</i>
	<p>2. Whether rent on rooms provided to in-patients is exempted? If liable to tax, please mention the entry of CGST Notification 11/2017-CT(Rate)</p> <p>3. What will be the rate of tax for bakery items supplied where eating place is attached - manufacturer for the purpose of composition levy</p>	<p>Act and hence GST rate of composition levy for the same would be 5%.</p>
5.	<p>Whether homestays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration?</p>	<p>Notification No. 17/2017-Central Tax (Rate), has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below ₹ 20 lakhs (₹ 10 lakhs in special category states) per annum and thus not required to take registration under section 22(1) of CGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017.</p>
6.	<p>To clarify whether supply in the situations listed below shall be treated as a supply of goods or supply of service:-</p> <p>1. The books are printed/published/sold on procuring copyright from the author or his legal heir. [e.g. White</p>	<p>The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.</p>

<b>Sr. No.</b>	<b>Questions/Clarifications sought</b>	<b>Clarifications</b>
	<p>Tiger Procures copyright from Ruskin Bond]</p> <p>2. The books are printed/published/sold against a specific brand name. [e.g. Manorama Year Book]</p> <p>3. The books are printed/published/sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)]</p> <p>The books are printed/published/sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]</p>	
7.	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

**FAQs on GST Services as on 12/02/2018**

<b>Sr. No.</b>	<b>Issue</b>	<b>Clarification</b>
1.	Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).	Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT(Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) <i>refers</i> ]
2.	<p>Is GST leviable on the fee/amount charged in the following situations/cases: -</p> <p>(1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account.</p> <p>(2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.</p> <p>(3) When a person files an appeal to Consumers Disputes</p>	<p>Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/State/District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal on account of the following:-</p> <p>(1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasijudicial</p>

<b>Sr. No.</b>	<b>Issue</b>	<b>Clarification</b>
	<p>Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or ₹ 25000/- whichever is less, is required to be paid.</p>	<p>machinery is sought to be set up at District, State and Central levels.</p> <p>(2) The President of the District/ State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.</p> <p>(3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/ witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc.</p> <p>(4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC.</p> <p>(5) The Commissions have been deemed to be a civil court under CrPC.</p> <p>(6) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.</p>

<b>Sr. No.</b>	<b>Issue</b>	<b>Clarification</b>
		In view of the aforesaid, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.
3.	Whether the services of elephant or camel ride, rickshaw ride and boat ride should be classified under heading 9964 (as passenger transport service) in which case, the rate of tax on such services will be 18% or under the heading 9996 (recreational, cultural and sporting services) treating them as joy rides, leviable to GST@ 28%?	Elephant/camel joy rides cannot be classified as transportation services. These services will attract GST @ 18% with threshold exemption being available to small service providers. [Sl. No 34(iii) of notification No. 11/2017-CT(Rate) dated 28.06.2017 as amended by notification No. 1/2018-CT(Rate) dated 25.01.2018 <i>refers</i> ]
4.	What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)? The equipment is imported at GST rate of 28% and leased further in India where operator is supplied by the leasing company, diesel for working of machine is supplied by customer and transportation cost including loading and unloading is also paid by the customer.	Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%. IGST paid at the time of import of these goods would be available for discharging IGST on rental services. Thus, only the value added gets taxed. [Sl. No 17(vii) of notification No. 11/2017-CT(Rate) dated 28.6.17 as amended <i>refers</i> ].
5.	Is GST leviable in following cases: (1) Hospitals hire senior doctors/ consultants/technicians independently, without any	Health care services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempt. [Sl. No. 74 of

<b>Sr. No.</b>	<b>Issue</b>	<b>Clarification</b>
	<p>contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</p> <p>(2) Retention money: Hospitals charge the patients, say, ₹ 10000/- and pay to the consultants/technicians only ₹ 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge</p>	<p>notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended refers].</p> <p>(1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.</p> <p>(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India[para 2(zg) of notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</p> <p>(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>



<b>Sr. No.</b>	<b>Issue</b>	<b>Clarification</b>
	<p>tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	
6.	<p>Appropriate clarification may be issued regarding taxability of Cost Petroleum.</p>	<p>As per the Production Sharing Contract(PSC) between the Government and the oil exploration &amp; production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called “Cost Petroleum”.</p> <p>The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for</p>

<b>Sr. No.</b>	<b>Issue</b>	<b>Clarification</b>
		<p>themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.</p>



